(28,627)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 672.

CHARLES GLEN COLLINS, APPELLANT,

vs.

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1922.

1 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

versus

FRANK M. MILLER, United States Marshal.

Appeal from the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable Within 30 Days from the 25th Day of November, 1921, at the City of Washington, D. C.

Appearances:

Messrs. J. Zach Spearing and Howell, Wortham & Howell, attorneys for Charles Glen Collins, Appellant.
Robert H. Marr, Esq., Attorney for Victor Loisel, U. S. Marshal for the Eastern District of Louisiana, Appellee.

TRANSCRIPT OF RECORD.

2 *Agreement as to Transcript of Appeal.*

Filed Dec. 15, 1921.

J. Zach Spearing, Lawyer, Masonic Temple, New Orleans, La.

United States District Court, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

F. M. MILLER.

Agreement as to Transcript of Appeal.

It is agreed by counsel for relator and respondent that this case was again heard by the United States District Court for the Eastern District of Louisiana upon the record as made up on the appeals from the judgment of the said Court, rendered on the 21st day of February, 1919, bearing Nos. respectively 27063 and 27064 of the Supreme Court of the United States, October Term 1918, and like-

wise respectively numbers 977 and 978 on the docket of said Court.

That judgment was rendered on the second hearing on October 25, 1921 on the said record and upon the additional proceedings which took place before the said Court on October 24, 1921.

It is further agreed that the printed record under numbers 27063 and 27064 of the Supreme Court of the United States, October term 1918, shall form part of the record on the appeal from the judgment of October 25, 1921, and that the said printed record may be used in the Supreme Court upon the hearing of the present appeal and that if need, be, the said printed record may be reprinted as a part of the record of the present appeal, the same as though all of the matiers contained in the said printed record were copied in the transcript of appeal from the judgment of October 25, 1921.

It is further understood and agreed that in addition to the
3 printed record above referred to, the record on the present appeal shall consist of the following, to-wit:

First. This stipulation or agreement.

Second. All proceedings, docket entries, minute entries and documents in this case since the making up of the transcripts of appeal from the judgment of February 21, 1919.

Third. The report of proceedings before the United States District Court for the Eastern District of Louisiana on October 24, 1921 including the letter from the Secretary of State, dated April 20, 1921, to the Clerk of the United States District Court for the Eastern District of Louisiana, which was read to the Court as part of the proceedings held therein on October 24, 1921, and which is referred to on page 13 of the said report.

Fourth. The petition and order of appeal.

Fifth. The bond of appeal.

Sixth. The assignment of errors.

Seventh. The citation of appeal and the return thereon.

It is further understood and agreed that either party may by præcipe or in any other manner bring up and have incorporated in the record any paper, document, entry, matter or thing which such party may, at any time, deem necessary or advisable to form part of the record.

New Orleans, December 15th, 1921.

(Signed) J. ZACH SPEARING,
Counsel for Relator.

" ROBERT H. MARR,
Counsel for Defendant.

4 *Proceedings Had in Open Court.*

Filed Dec. 15, 1921.

United States District Court, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK N. MILLER, U. S. Marshal.

Report of Proceedings Before the Hon. A. E. Grubb, Judge, on the 24th Day of October, 1921.

Appearances:

R. H. Marr, Esq., for the British Consul General.
Roland B. Howell, Esq., for Charles Glen Collins.
J. Zach Spearing, Esq., for Charles Glen Collins.

Mr. Marr: May it please the Court. I presume you know the history of this case just as well as I do. There were originally filed three affidavits, charging Charles Glen Collins with being a fugitive from justice from India. Colonel Collins presented himself as a witness in two of those cases, and Judge Foster refused to allow him to testify.

Subsequently, upon the trial of the other affidavit, the
5 Judge did allow Colonel Collins to testify. He applied to your Honor for a writ of habeas corpus, and your Honor granted that writ in the two cases in which Colonel Collins did not give his evidence. An appeal was taken to the Supreme Court of the United States, and the Supreme Court of the United States remanded the case on the theory that the litigation had not yet come to an end.

Matters came back to Louisiana in that shape, and then Judge Foster, having some doubt in his own mind as to how far your Honor had a right to remand to him the trial of these two cases on which Colonel Collins had not testified, I thought the best way to meet that difficulty was by proving new affidavits, setting up in those new affidavits exactly the same state of facts as was set up in the original affidavits.

On those affidavits Colonel Collins was tried and resulted—that trial resulted in Colonel Collins being remanded to the justice of India for trial.

The papers were then transmitted to the Secretary of State for his action, and the Secretary of State wrote me a letter in which he stated that he thought, in the present condition of the record, that he could not remand Colonel Collins to India; in other words, he

took the view that the case in Washington had not yet been decided, and so I think the real matter *matter* in controversy before
6 your Honor today is whether or not Colonel Collins, now having been permitted to testify upon these affidavits which contain exactly the same recitals as the original affidavits, whether or not your Honor will now, under those two affidavits, issue a writ of habeas corpus, or whether that writ will be refused.

The Court: Let me understand this. Is Colonel Collins in custody of the Marshal now or is he out under bond?

Mr. Marr: He is out under bond.

The Court: Wouldn't that dispose of the habeas corpus proceedings, if he is out under bond?

Mr. Marr: That, of course, is theoretically true. A man who is out of the custody of an officer is not entitled to habeas corpus, because a habeas corpus enlarges him when, as a matter of fact——

The Court: What was the condition of the bond he gave; to present himself here? He is here now.

Mr. Marr: Why I don't know what the condition of the bond was. I think it was an ordinary every day appearance bond.

The Court: I suppose the judge who entertained the writ might possibly enlarge him on bond to hold himself at his disposal, ready to surrender himself to that judge.

Mr. Marr: As a matter of fact, Judge Foster didn't act as judge in this case at all. He acted as a committing magistrate or examining magistrate, and, under his power as examining mag-
7 istrate, under those two affidavits, he refused to release Colonel Collins on writ of habeas corpus, and decided on those two affidavits he was a fugitive from justice and committed him to await the action of the United States authorities to turn him over to the authorities of British India.

The Court: And Judge Foster allowed him bond on that third affidavit?

Mr. Marr: After that hearing, he enlarged him on bond.

The Court: What is the condition of that bond; he is supposed to surrender himself——

Mr. Marr: I suppose the condition of that bond is to surrender himself to the authorities of India when called for. I presume that is the condition of the bond. I don't remember the amount of the bond, but Judge Foster released him on the bond.

The Court: What I don't understand is this: How in that condition can a habeas corpus lie, when he has been enlarged on bond and the condition of the bond is to surrender himself.

Mr. Marr: Of course the regular proceeding would have been for Colonel Collins to surrender himself and apply for a writ of habeas corpus, but as a matter of fact——

The Court: I don't care about the technicalities, but the
8 Court has to have jurisdiction over the matter in some way.

Mr. Marr: The matter is this. Your Honor remanded him to be tried on these two new affidavits, and he was tried on these two new affidavits. Now the question for your Honor to decide is whether or not your Honor's instructions have been carried out and

a rehearing held on those two affidavits, whether or not Collins is entitled to be released on habeas corpus, just as much so as if your Honor—in other words, as if you had before you now the original application for writ of habeas corpus; because, under the decision of the Supreme Court of the United States, that has never been disposed, of, your Honor having remanded the case for the purpose of allowing Colonel Collins to give his testimony, and, under that remand, Colonel Collins having given his testimony, the question for your Honor now to decide is, whether or not, under that remand and under the record as it is now presented to you, he is entitled to a writ of habeas corpus. On that construction, I don't think there is any necessity for applying for any writ at all, because it is simply going over the whole case as originally presented to your Honor. In other words, you have remanded the case for the specific——

The Court: Suppose he wanted to take the position now of questioning the sufficiency of the affidavits, would that affect the issuing of another writ of habeas corpus?

9 Mr. Marr: Yes; but he has not chosen to take that position, and I——

The Court: His having given bond, it seems to me, would prevent his suing out a new writ.

Mr. Marr: In equity, he cannot sue out a writ of habeas corpus when he is not in custody, because a writ of habeas corpus says you must produce the man's body in court to ascertain the cause of his detention. If he is not detained, of course such a writ will not run.

The Court: As I understand it, the only thing I can see is, if I can dispose of the original writ of habeas corpus——

Mr. Marr: Anyhow, the best way is to dispose of the application; that is the matter that is presented to your Honor.

Mr. Spearing: I cannot concur with my friend on the other side as to any of his positions. I don't think that the question before the court is as stated by him. There is a clear distinction that must always be borne in mind, and that is, that Judge Foster, in acting in this case, never acted as District Judge, but merely as commissioner or committing magistrate, and therefore what Judge Foster did from the inception of this case to the present time was merely done as committing magistrate.

Your Honor sat before, and is sitting now, I assume, as

10 District Judge. Nothing can be clearer than this, that the District Judge is not authorized to hear or receive evidence in an extradiction case. That must be heard by a commissioner. We concede that from his decision there is no appeal properly so called, but if the accused be committed to await the result of the action of the executive, then the accused has a right to apply to the District Judge for a habeas corpus.

Now that is what we did in this case. Upon that habeas corpus and the hearing before your Honor, a certain judgment was rendered. I read it, because I doubt if your Honor will remember the phraseology of it, though you will remember your conclusions, no doubt.

The Court: I think it would be wise to read it, because my recollection is not infallible.

Mr. Spearing: It is true that there were three affidavits, which were consolidated into one case. When Judge Foster issued his certificate of commitment for extradition, and forwarded the same to the Secretary of State, he did not issue three certificates, one upon each affidavit, but he issued only one certificate covering all three affidavits. When the Secretary of State issued his warrant of extradition, which was necessary before the accused could be extradited, he issued but one warrant, and when we applied to your Honor for a writ of habeas corpus, we applied in one petition for one
11 writ, and only one writ was issued. And that one writ was heard before your Honor on the record as made up before the Commissioner, Judge Foster acting as commissioner, and this is the judgment that was rendered:

"As to the commitment of the relator (Colonel Collins) to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretences from Alia Raza, relator's application for habeas corpus is denied (that was the case in which Colonel Collins was permitted to testify, to a limited extent as we contend). As to the commitment based on the charge of obtaining property by false pretences from Pohoomul Bros. and on the charge of obtaining property by false pretences from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits, and it is further ordered that as to the two affidavits last mentioned this cause be and it is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the laws of Louisiana."

From that judgment two appeals were taken, one appeal by Colonel Collins from the whole judgment. This judgment was prepared and handed down, or entered as though there was more than one writ, but always bear in mind that there was but one writ and that
12 Colonel Collins then appealed from the judgment bodily, not only from the judgment directing his extradition or the committing for extradition, but from the judgment remanding him.

The British Consul General also took an appeal, and the Supreme Court heard those two appeals together and rendered one judgment on the two appeals, and, with your Honor's leave and permission, I am going to read—this is a printed copy—it is reported in the 252 United States—I brought this because it is so much easier, and with your permission, I am going to read it, because I think it is very illuminating on the present situation. The opinion was handed down by Justice Brandeis.

(Mr. Spearing then read the opinion in question).

This decree, if your Honor please, with all due deference to my friend, was not a remand. Both appeals are dismissed for want of jurisdiction. Therefore we have your Honor's judgment unaffected, because, as I take it, with the appeals dismissed, the judgment stands as rendered.

Now that decision, that decree, became final. We appeared here one day before Judge Foster, still sitting as committing magistrate or commissioner, and instead of undertaking to hear under the judgment remanding—and Judge Foster as committing magistrate has never undertaken to hear under the judgment remanding, and therefore, we have not, up to the present time presented any ob-
13 jections to that, because, as I say, the time for doing so has not yet arrived, we have no occasion to object to his hearing until he undertakes to hear—instead of undertaking to hear on your Honor's judgment remanding, two separate and entirely new affidavits and proceedings were instituted, and under them—mind you, Collins was then, and had been for some little time, out on bond—under the conditions created by your Honor's judgment, Collins was then re-arrested on the new affidavits, entirely new, separate and distinct, even though the verbiage were identical with the former affidavits, and entirely new proceedings, new proceedings—as I say, Collins was again arrested and brought before the Court to be tried on those new affidavits.

We protested and objected—the record is here to demonstrate it—against going into that, on the ground that the case was in the District Court and that no proceedings could be had until—except under the judgment of the District Court—until further orders of the District Court.

We contended that Judge Foster had no jurisdiction to hear those affidavits, and Judge Foster overruled all of our objections. There were numerous objections, the record is just filled with them, and he overruled all of those objections and nevertheless heard the case on those two new affidavits, never once pretending, neither the applicant in the case nor Judge Foster ever once pretending that
14 he was hearing on the old affidavits, but distinctly and definitely and affirmatively on the new ones, and Collins was committed to await the action of the executive on the extradition.

In that situation he was again admitted to new bail on the new affidavits.

The Court: There are only two affidavits, as I understand it, here?

Mr. Spearing: Only two.

The Court: What became of the one under which he was held?

Mr. Spearing: Nothing has ever been done with reference to that, because, the writ of habeas corpus being one writ, this being one judgment and not divided, our contention is that they cannot divide this judgment, cannot take that portion which is in their favor and avail themselves of it and disregard that portion of it which is against them and in our favor, and the question of the maintenance of the writ of habeas corpus is in our favor, as to the two affidavits, and our contention on that point is that the applicant, the British Government, cannot divide that judgment and say we will disregard that

portion which remands Collins and commits him to the House of Detention—we have here a contradictory judgment, we have one which orders him extradited—that is, a judgment which in one part orders him enlarged and in the other part orders him held here.

Now that situation Judge Foster, still as committing magistrate, issued his certificate to the executive, and that went forward to the Secretary of State, and Collins' attorneys in Baltimore, Mr. Kemp Bartlette and Mr. Guy M. Miller, of the firm of Bartlette, Paul & Fagge, appeared before the Secretary of State and made an argument and filed a brief, protesting against the issuance of the warrant of extradition on those two affidavits, or on the certificate of Judge Foster on those two affidavits, and the Secretary of State maintained our contention in that regard.

Our contention was that those are new matters, that Collins was still under the authority of the District Court, he was still in the custody of the District Court under the habeas corpus proceedings, and that the commissioner could not take him, could not take Collins, from the custody of the District Court and try him,—and Judge Foster, as committing magistrate, was trying him again—and order another extradition or discharge him, because a discharge before him would not have availed anything, because he was still in the custody of the District Court—and I have no hesitation in asserting, it was my firm conviction, that, under the jurisdiction, Collins is still in the custody of the District Court, the habeas corpus transferred him from the custody of the Marshal to the custody of the Court, and that no one but the District Court can at this time deal with him.

Now the letter of the Commissioner—that is, the letter from the Secretary of State—is not very long, and I am going to read that letter, if your Honor will permit. It is dated April 20, 1921, it is addressed to Mr. Carter, the Clerk of Court, and it says:

"Address official communications to The Secretary of State, Washington, D. C.

Department of State,

Washington.

April 20, 1921.

In reply refer to So 211. 45 C 69/25.

Mr. H. J. Carter,
Clerk of the United States District Court,
Eastern District of Louisiana,
New Orleans, Louisiana.

SIR:

The Department refers to your letter of February 4, 1921, with which, in accordance with instructions from Honorable Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, you transmitted the record of proceedings had before him in the matter of the application for the extradition to India of Charles Glen Collins, together with a certified copy of Judge Foster's opinion.

After careful consideration of the matter in the light of the opinion of the Supreme Court in the case of Collins v. Miller, 252 U. S. 364, the Department has been reluctantly forced to the conclusion that at the present time the case is not in such situation as to justify the issuance of a warrant for the surrender of Collins.

17 The Supreme Court in its opinion seems to have held with reference to the habeas corpus proceedings had in this case before Judge Grubb that, since his decision dealt with the detention of the fugitive on three charges and denied relief as to one, but required a further hearing by Judge Foster as to the others, such decision has not the finality and completeness necessary for an appeal to that Court. In the Course of that opinion the Supreme Court said:

"Was the judgment appealed from a final one? A single petition for a writ of habeas corpus thus sets forth detention of the relator on three separate affidavits. As to the commitment on one of these the judgment entered by Judge Grubb directed that the writ be 'denied.' Such denial, or more appropriately dismissal, of the writ would obviously have been a final judgment, if it had stood alone. * * * It declared that 'the writs of habeas corpus are granted' as to the commitments on the other two affidavits and ordered that the case be remanded for further hearing before Judge Foster. * * *"

"Nor need we consider whether Judge Grubb, having found that a proper hearing had been denied by the committing magistrate on the two affidavits, might have heard the case de novo, and have determined thereon whether the prisoner should be discharged; * * * The prisoner remained under the authority of the District Court (see Mr. Justice Nelson in In re Kaine, 14 How. 103, 133-4); and as the writ of habeas corpus had not been disposed of there so far as concerned the detention on two of the three affidavits, the decision below on that branch of the case was not final. * * *"

"Here a single judgment deals with the detention on three affidavits. Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this Court."

The Supreme Court discusses in a general way the appropriateness of the order which was entered by Judge Grubb without passing on the question. With reference to this matter the Court says:

18 * * * "the extradition commissioner had certified his findings to the Secretary of State before the petition for writ of habeas corpus was filed. Whether, for this reason the time had not passed when the Court could correct the action of its commissioner, except upon reopening of the proceedings before him with the consent of the Executive (see 6 Ops. Atty. Gen. 91),—or, in other words, whether in such a case the power of the court is not limited to ordering the discharge of the prisoner either absolutely or conditionally except upon a rehearing before the commissioner with

the consent of the President—this question, we are not required to consider at this time. For the proceeding ordered by Judge Grubb had not been taken; nor had the power sought to be exercised by him been challenged."

In view of the effect of the Supreme Court's decision and particularly in view of the Court's declaration as to Collins being under the authority of the District Court by virtue of the habeas corpus proceedings, it seems to the Department, as indicated above, that it would not be justified at this time in issuing a warrant of surrender.

Accordingly, the record of proceedings had before Judge Foster is returned herewith, and it is requested that you will be kind enough to acquaint him with the views of the Department as set forth, and to convey to him the sincere regret with which the Depart-
19 ment has come to the conclusion indicated.

I am, Sir,
Your obedient servant,
(Signed) CHARLES E. HUGHES.

Enclosure: Record of proceedings as above.

Now, I submit, if your Honor please, that under those circumstances, neither your Honor nor Judge Foster, neither your Honor as District Judge, nor Judge Foster as committing magistrate, is justified in hearing or otherwise disposing of the new affidavits, that, under the decision of the Supreme Court, you would be going through a vain formality towards something on those new affidavits, and the Secretary of States I have no doubt, would confirm that decision too, so that is not a matter before the Secretary of State. We must have the action of the District Court in the original proceedings, because it is in those proceedings, as the Secretary of State points out, that the Supreme Court held in the appeal taken in those proceedings that Collins is in custody, it is in those original proceedings that the District Court, your Honor as District Judge, has the control and custody of Collins.

Now, if that be true, it seems to me the situation here is
20 this. We have here this judgment, and I submit you cannot proceed further with this judgment because the judgment remands Collins to be heard before Judge Foster. Whether that is a proper judgment—I mean one that can be legally enforced—it may come up at some future time—but I submit your Honor cannot disregard this judgment rendered by your Honor as District Judge, and your Honor, as District Judge, cannot sit as committing magistrate in this case. Of course the identity of the person who sits on the bench and hears the case is immaterial. The point is the District Judge has custody and control of Collins in the original habeas corpus proceedings and that they must be disposed of.

Mr. Marr: May it please the Court, my view of it is, taking that situation, if Collins is in your custody, and if your Honor is satisfied from the testimony which is now adduced before you, that the habeas

corpus ought to be finally denied, then I take it your Honor will deny that writ. You are by no means sitting as an appellate tribunal at all. You are sitting here to decide whether or not, under the record as it is made up, your Honor, a writ of habeas corpus ought to be or ought not to be denied.

Now you have said that, in the condition of the record as it was presented to your Honor originally, you could not pass on that question; that Collins had the right, under the treaty between the United States and Great Britain, to have his preliminary
21 examination conducted in the same way as if he were tried under an affidavit for violation of a statute of the State of Louisiana, and your Honor held that, under the statutes of the State of Louisiana, Collins had a right to appear as a witness in his own behalf.

Now all those requirements laid down by your Honor in the refusal to—in the granting in this qualified way of the writ of habeas corpus, have been complied with. You are not sitting here as appellate judge. All you are asked is to pass upon the record which is now being made up, and say whether or not the record as it has been made up before your Honor is such as to warrant the refusal of the writ of habeas corpus.

Now as far as the first affidavits are concerned, why should we have gone into the trial of the case which has been disposed of by your Honor, you stating distinctly in that case that all the requirements you laid down had been met, that Collins had no cause of complaint so far as imprisonment was concerned, that he had appeared as a witness in his own behalf, that a probable cause had been shown, that he was in India at the time of the alleged commission of the crime, and that he was the person described in the affidavit. So that, in these proceedings, all that your Honor can look into at all is the regularity of the proceedings, whether or not the proceedings which have led up to the judgment ordering the return of the fugitive to the demanding country or whether
22 all those proceedings have been regular. Your Honor held that as to two of the affidavits the proceedings were not regular, because Collins had not been allowed to testify in his own behalf.

Now confessedly it will be shown by inspection of the affidavits themselves that the affidavits made before Judge Foster are, in their terms, exactly the affidavits which your Honor—under which your Honor—remanded him to be tried; they are exactly the same in verbiage, they charge the same offence, the same party, and on the same persons upon whom the crime was committed, so that everything your Honor's judgment required has been done in this case, and now, with the entire record before you, the sole question presented to you for adjudication is whether or not under these two affidavits on which your Honor remanded him, whether or not this man is entitled to be enlarged on habeas corpus. If he is, why, grant the writ; if he is not, why, refuse the writ.

We have now exactly the same affidavits and exactly the same case that was presented to your Honor in the case in which the writ

was refused. We have the identification of Collins as being the man who was wanted in India; we have the testimony of his own admission that he was in India at the time of the commission of this offence; we have his being examined as a witness in his own behalf, as was alleged and was granted to him under the laws
23 of the State of Louisiana. So your Honor has presented to you for adjudication under these two affidavits exactly the same condition as you had in the case of the affidavit in which the writ was refused.

Now the view that the Secretary of State takes of the matter, I think your Honor knows. I think your Honor has in your possession the letter which the Secretary of State wrote to me and which I transmitted to you, and which, I believe corresponds practically with the same letter which he wrote to the Clerk of Court.

Now everything that was required by your Honor has been done in this case, and it seems to me there is nothing left to do except to refuse the granting of the writ, because it is a question of what the affidavits really are and not what you may happen to call them. Now does it make any difference in the world whether Collins is prosecuted under an affidavit dated the 13th of May, say, or is prosecuted under one dated some other date, now what difference does it make; they are exactly the same affidavit.

The Court: Wouldn't there be this difference? If I were to dismiss the habeas corpus, he might then be apprehended under the original warrant from the Secretary of State without any reference to these second proceedings, wouldn't he?

Mr. Marr: I don't exactly understand.

24 The Court: If I were to dismiss the writ of habeas corpus, wouldn't the original warrant issued by the Secretary of State be sufficient for his apprehension and return to India without resort to any of those proceedings?

Mr. Marr: I suppose so.

The Court: That would be wrong, of course, from my point of view, because I think that warrant was not sufficient having been issued without Collins having been examined as a witness.

Mr. Marr: But he has been examined as a witness since.

The Court: He was not examined at the time the warrant of the Secretary of State was issued, the warrant was issued without an examination of him in two of the proceedings, so if he was apprehended under that warrant, then the case was in no better position afterwards, when he was heard as a witness, than it was when I first passed upon it, because that warrant was issued without any reference to subsequent proceedings, since the Supreme Court sent the case back, so you would either have to change my ruling that an examination was necessary to make the Secretary of State's warrant legal, or else I would have to stick to my ruling, it seems to me, and make a rehearing of the case by the commissioner and an examination of Mr. Collins by the commissioner a condition precedent to my denying the writ.

25 Mr. Marr: Yes, but that examination has been held.

The Court: Yes, but it was held after the warrant was is-

sued. If I deny the writ of habeas corpus, the effect would be to remove him to India, because you have no warrant from the Secretary of State, the Secretary of State——

Mr. Marr: The Secretary of State has not issued any warrant, he has refused to issue——

The Court: That is what I said.

Mr. Marr: He has refused to issue that warrant on the basis of the judgment rendered by the Supreme Court of the United States, that judgment being that the matter was not finally disposed of.

The Court: By final judgment, but it seems to me the petition of habeas corpus—dismissing the writ of habeas corpus, the result would be that Colonel Collins would be apprehended under the outstanding warrant from the Secretary of State, in fact, though there has been no hearing which has been presented to the Secretary of State in which he was allowed to be examined on two of the affidavits.

Mr. Marr: If that was done, why the result would certainly be the beginning of all of these proceedings over again.

The Court: I think you will either have to rely on his presence now without having had him re-examined in the original proceedings, you would either have to rely on the one affidavit and
26 ask me—have me dismiss the writ as to that affidavit and grant the writ as to the others, if that can be done, and then apply to the Secretary of State for a new warrant under the second proceedings in the two affidavits. Then the Secretary of State would not have the answer that he was under the jurisdiction of the District Court, because he would not be.

Mr. Marr: I just don't exactly catch that.

The Court: It seems quite clear to me. If I dismiss the writ as you ask me to in its entirety, he would fall under the original warrant issued by the Secretary of State and he could be apprehended and sent to India under that warrant, in spite of the fact that he has never been examined on the two affidavits——

Mr. Marr: But he has been examined, in point of fact.

The Court: But that has never been presented to the Secretary of State in the proceedings on which the warrant was issued. If the hearing had been in the original proceedings and Colonel Collins had been examined and request made to the Secretary of State to reissue the warrant, then your position would be correct, but that was not done. As I understand Mr. Spearing, on two of the affidavits, Mr. Collins was not permitted to testify, in the original proceedings, and the matter is in exactly the same condition as it was two
27 or three years ago when it was presented to me—as to one of the affidavits he was heard on and as to two of them he was not heard on, in those proceedings.

Now if I dismiss the writ of habeas corpus, that makes the Secretary of State's warrant which was outstanding when I heard the case before effective, and he would be removed to India under that warrant of the Secretary of State, though he has not testified at all in the proceedings under which that warrant was issued.

Now it seems to me, that being true, and he having applied in the new proceedings under the two affidavits and permitted to be ex-

amined, under that proceeding, and you having applied to the judge for a certificate for the Secretary of State for a warrant, and he refusing the warrant under the second proceeding on the ground Colonel Collins is still in the jurisdiction or custody of the District Court, the way to get at it would be to discharge him from the custody of the District Court, so that they the Department of State would have no answer to your request for a warrant under that new proceeding. To do that, it seems to me is the only way I can do that; as it stands now, to hold him under *under* one affidavit and discharge him under the two affidavits——

Mr. Marr: You have, under these affidavits, what your Honor requires to be done.

28 The Court: I know, but that goes back to the fact that if you dismiss the writ you reinstate that warrant of the Secretary of State. But then he has never been examined in the proceedings in which the warrant was issued. That is clear, because the Secretary of State has refused to issue a warrant in the new proceeding. He never testified under the old. Then he would be removed to India under that warrant under three affidavits, when, up to the present time, he has never been permitted to testify under two of them. I am perfectly willing, if it suits your purpose, to amend the order in the original proceeding so as to dismiss the writ as to one affidavit and grant the writ as to the other two affidavits, reciting the fact that it is——

Mr. Marr: If your Honor please, if your Honor does that, that would be a final disposition——

The Court: That is true, but you are proceeding under a new case, and your demand on the Secretary of State for a warrant is in the new case. The only way to do is to get the old case out of the way, or have another hearing on that old case instead of the new one. It seems clear it must be one of two things, either have the order in the old proceedings, by which the case was remanded, or else abandon it and then proceed to rely on the new proceedings. If you elect to do that, then I will dismiss the writ as to the good affidavit in the original proceedings and grant the writ as to the two affidavits

29 that were held to be bad because he was not permitted to testify under the old proceedings, and let you apply to the Secretary of State for a new warrant under the new proceedings.

Mr. Marr: Your Honor's opinion then is that, although these new affidavits recite exactly the same condition of facts as those recited in the affidavits remanded by your Honor, that those are virtually new proceedings?

The Court: Well, I don't know if they are or not. Then you should re-apply to the Secretary of State under the old proceedings for a new warrant, because he has never had an opportunity to pass on the matter since it has been in any different state than it was originally.

Mr. Marr: The Secretary of State, as I understand his communications, both to me and to the Clerk of Court, his view was that there had never been a final disposition of this case, under the decision of the Supreme Court of the United States.

The Court: Excuse me. I said this: I don't suppose it requires any new warrant from the Secretary of State. It seems to me what should have been done was to have permitted Colonel Collins to testify in the original proceedings, as required, and report that fact to the District Judge who granted—that is myself—who granted the habeas corpus. That having been done, then I would have dismissed the petition in its entirety and he could have been
30 apprehended under the original warrant.

Mr. Marr: That is just exactly what has happened.

The Court: Mr. Spearing expressly stated there was no hearing in the original proceedings.

Mr. Marr: That was done on new affidavits which took the place of the old affidavits. Maybe they were given a new number but it was exactly the same proceedings; the recitals of the affidavits are exactly the same.

The Court: Well, you can have two companion prosecutions under identical affidavits; no doubt about that.

Mr. Marr: Identical affidavits; charging identically the same thing. The substance of things don't change because they are brought in different proceedings.

The Court: Well, he went further than that, and said you declined in that hearing to offer evidence in support of the original affidavits.

Mr. Marr: We went into the whole case just exactly the same as we did in the original, with the single exception that Collins' witnesses were heard.

The Court: Of course you concede that one commissioner may have a hearing on an affidavit against a man, and another commissioner might have the same hearing on the same identical facts and the same identical offence, and they would not be the same case.

Mr. Marr: It is not a different case. The only difference
31 between the two cases is that the new affidavit was substituted for the old one.

The Court: If that is true——

Mr. Marr: That is absolutely the only difference——

The Court: Then it becomes a question of fact.

Mr. Marr: They may have gotten a different number on the docket of the court, or may have been docketed at that time, but that does not make it a different proceeding.

The Court: I don't agree with you on that. The cases are identified by different numbers on the docket. An order might be made in one case and that order would have no application to the other case, unless they are consolidated. If you have them numbered 495 and 500, then, though the subject matter might be identical, they are different cases altogether, and an order made in No. 500 cannot be made to apply to No. 495.

Mr. Marr: Well, I never imagined there was so much sanctity in a mere number.

The Court: The number is the one thing that you distinguish one case from another with.

Mr. Marr: Yes, but that is for the convenience of the clerk, but it doesn't alter the substance of things.

The Court: You certainly wouldn't say—for instance, sup-
32 pose two lawyers brought the same suit, as they sometimes do, for the same client and the same cause of action, and the only difference is that they are differently numbered, and then, if one case is dismissed—for instance, if there is a dispute about who is the lawyer for the plaintiff—if one case is dismised, that wouldn't have the effect of dismissing the other case surely?

Mr. Marr: Just exactly the same way, suppose a man is indicted for manslaughter, and the District Attorney enters a noll- pros. on one count in the indictment and the Grand Jury convicts him on the indictment, it is the same prosecution.

The Court: It is the same prosecution but not the same case. If it was the same case, there would be no indictment, because that indictment had been annulled.

Mr. Marr: I can see, if your Honor please, that if there had been a change in the affidavit, if anything other or different was done in the trial of the case, in allowing Collins to place on the stand the witnesses that he was not allowed to examine, that it would be a different proceeding, but when no such thing takes place and the affidavits are identical, and the only distinguishing mark between those affidavits is the numbers they bear on the docket of the Court, I can't see for the life of me how it is a different proceeding. It is just carrying out what your Honor said should be done, that
33 this man should be given an opportunity to be heard in his own behalf.

The Court: Sure, but that was in the case then pending, and there is no identi-y of subject matter, because in the original case there were three affidavits, and he did not testify on two affidavits, was it?

Mr. Marr: Two affidavits.

The Court: Well then, the subject matter is not the same.

Mr. Marr: There were three affidavits, and those affidavits were tried separately, those affidavits were tried separately, and there was——

The Court: You overlook the fact they were consolidated and one judgment issued covering all three.

Mr. Marr: It is very true they were consolidated at the time, but different judgment were rendered in each case and at different times.

The Court: Well, the certificate on which the warrant was based was after the consolidation and at the time this hearing was had, the second hearing, there was a consolidated case involving three affidavits. Now the new case with a different number involved but two of the three affidavits, so it can not be said that the subject matter is identical.

Mr. Marr: Your Honor must bear this fact in mind that it
34 would have been a vain thing to have tried all three cases over again, when your Honor refused the writ of habeas corpus in one of the cases.

The Court: I am not contending I never heard the first case, but I mean you should have dealt with the two affidavits in the old case. If you insist in the new case, then you can't do it in the old.

It strikes me I have no right to change the order I have already made and accept any other proceedings taken in that case since I rendered it. All I can see I can do for you now is this; modify the order in the first case so as to deny the writ as to the one affidavit and so as to grant the writ as to the other two affidavits, reciting that there has been no examination, and that an examination has been held in separate proceedings, and therefore there is not any longer any use in that first proceeding, so far as the first two affidavits are concerned. Then, without discharging relator—I mean Colonel Collins—from the custody of the District Court in the first proceeding, and he would be remanded back under the first affidavit to the extradition—the commissioner that delivered the extradition order—then you could re-apply to the Secretary of State under the other two affidavits in the second proceedings and certify to him that Colonel Collins was no longer in the jurisdiction of the District Court, and the original habeas corpus proceedings had been finally disposed of.
35 Under that, the Secretary of State would issue a warrant for his extradition under the other two affidavits. Now if you don't do that, all I can say is to have the hearing still under the first proceedings.

Mr. Marr: Then you are brought finally to this proposition. It is intimated in the opinion of the Supreme Court of the United States that they doubted very much whether or not the District Judge could remand the case to the commissioner to take testimony, basing that dictum on the theory that your Honor did not sit as an appellate court, and that, as you did not sit as an appellate court, you had no right to remand any case to the commisioner for trial at all. So if that view of the situation is taken, you see the danger that that presents.

The Court: Well, you can obviate that by proceeding on the other idea, for you to be able to say to them there is nothing held in the District Court under the original proceedings. When you get rid of that obstacle, then the Secretary of State would manifestly have no reason for not issuing the warrant under the second proceedings. The second proceeding is as good as the first, except you have not got that one good affidavit in the second proceeding.

Mr. Marr: The Secretary of State would be in this position. He would issue his warrant on the first affidavit because your
36 Honor will have granted the writ of habeas corpus as to these two subsequent affidavits.

The Court: It has already been issued under the first proceeding.

Mr. Marr: No; he wouldn't do anything about it at all. Your Honor has his letter there.

The Court: No; I say, under the first proceedings there is a warrant of extradition issued by the Secretary of State.

Mr. Marr: Yes sir; that originally took place.

The Court: How did that describe—did it describe it as three affidavits or how?

Mr. Marr: How is that?

The Court: Did it describe it as two or three affidavits, that he was allowed to testify on one, or describe it as three affidavits or how?

I say, did the original warrant of the Secretary of State show that he relied for its issuance on the three affidavits that had been filed by you against Mr. Collins?

Mr. Marr: I never saw that warrant, so I don't know what the recitals are. I know what took place was this, that after these two affidavits were tried and were certified to the Secretary of State, he refused to surrender Collins, as I take it from his letter, on that ground, that the Supreme Court of the United States had held
37 that the judgment rendered in the Collins case was not a final judgment. Now in the course of that judgment——

The Court: I don't see how that can reasonable be. I thought his reason was, as read to me, he wouldn't issue his warrant for his extradition, as long as his custody remained in the District Court.

Mr. Marr: I didn't read it that way at all. The idea as conveyed to my mind was that the——

The Court: Let's see the opinion; that is the best way to tell.

Mr. Marr: —matter had not yet been disposed of.

(Document in question handed the Court.)

The Court: This is what I had in mind. "In view of the effect of the Supreme Court's decision. * * * he would not be justified at this time in issuing a warrant." (The court reading from document.) In other words, they would not interfere with the jurisdiction of the District Court, which then had the custody of Mr. Collins under habeas corpus.

Mr. Marr: That seems, of course, to arise from his interpretation of the language of the Supreme Court, namely that this case had not been finally disposed of, and, as it had not been finally disposed of, the accused was in the custody from which he sought to be released.

The Court: What you have got to get rid of, as I see it, is
38 the jurisdiction of the District Court and the custody of Mr. Collins by the District Court. When you have done that, you can have him apprehended on the two affidavits.

Mr. Marr: The only possible way that can be done would be for your Honor to maintain the writ of habeas corpus as far as the original affidavit is concerned—I mean to refuse the writ of habeas corpus on that.

The Court: Well, I don't think so. I think it could be done by granting the writ of habeas corpus.

Mr. Marr: By what?

The Court: By granting the writ of habeas corpus.

Mr. Marr: You are not going to grant the writ, are you?

The Court: If I granted the writ of habeas corpus, he would then pass out of the custody of the District Court.

Mr. Marr: You can grant the writ of habeas corpus as to that affidavit in which it was held that the proceedings were perfectly legal.

The Court: Well, I could, at your request, certainly. I told you if you wanted it done, I will deny—dismiss the writ as to the good affidavit, and grant the writ as to the other two affidavits. Then it

seems to me, the effect of that would be he would be dis-
39 charged from custody on the bad affidavits and be surrendered to the extradition officer under the good affidavit, and that would eliminate the custody of the District Court altogether. He would therefore be no longer in the custody of the District Court and could be dealt with by the Secretary of State.

Mr. Marr: He would then not be in the custody of the District Court, but he would be in the custody of the United States Marshal.

The Court: No.

Mr. Marr: He must be in the custody of somebody if the writ of habeas corpus was denied.

The Court: He would be in the custody of the United States Marshal for surrender to the extradition officer.

Mr. Marr: What becomes of these two affidavits?

The Court: Then you would apply to the Secretary of State to issue the warrant, have it certified that he was no longer in the jurisdiction, or under the authority of the District Court, and that the original habeas corpus proceedings had been finally disposed of by that order.

Mr. Marr: Then what becomes of the other two affidavits?

The Court: What do you mean; the second or the first?

Mr. Marr: The second affidavits.

The Court: Well, I say, you have got the new proceedings
40 —under that new proceeding, Judge Foster has issued a certificate that you are entitled to extradition, to a warrant of extradition. The State Department refused to make it because of the custody, supposed custody, of Mr. Collins in the District Court, and that is the only reason they refused to grant it. Therefore, as soon as Mr. Collins is discharged from the custody of the District Court, then you represent that fact to the State Department, and, as I understand it, they will no longer refuse to issue the warrant of extradition.

Mr. Marr: Then if your Honor takes that view of this case, these two affidavits are new proceedings, and Judge Foster has certified to the Secretary of State that on these new proceedings he has found this man is a fugitive from justice and ought to be surrendered to the justice of India, and if your Honor maintains the writ of habeas corpus so far as dismissing the writ of habeas corpus, so far as it is based on the first affidavit, then, it seems to me that Collins would be extradited to India upon all three charges.

The Court: That is what it seems to me.

Mr. Marr: That is what I want to know.

The Court: Of course the only doubt about it would be whether the warrant issued by the Secretary of State, having been issued
41 upon the representation that all three affidavits or charges against him could be executed. I would suggest that you change it so that there would be only one charge against him.

Mr. Marr: So far as that is concerned, the judgment is now final, absolutely final; that case is entirely disposed of.

The Court: By appeal?

Mr. Marr: I mean it is disposed of, it is a final judgment.

The Court: Sure.

Mr. Marr: Then we are in this position. We have the final judgment of your Honor, maintaining the warrant as to one affidavit, holding that there is enough there to keep him on warrant, and dismissing the other two. That is a final disposition of the case, from which an appeal may now be taken. Then as to the two other affidavits, if the Secretary of State issues his warrant on those affidavits and Collins is taken back to India, he can be tried on all three affidavits.

The Court: If the appeal is decided in that way.

Mr. Marr: So, if they want to get any relief out of these two new proceedings, they will have to keep Collins in jail, apply for a writ of habeas corpus and have your Honor try it.

The Court: That is true, after you get your warrant from
42 the Secretary of State; till that, of course, he cannot be held in custody in the second proceedings.

Mr. Marr: Can't what?

The Court: Can't be held in custody in the second proceedings until the Secretary of State issues a warrant for his extradition; therefore, even by consent, I cannot hear a habeas corpus under the second proceedings.

Mr. Marr: The very moment—I understand there are two stages in those extradition proceedings. One is when the affidavit is made. Upon that the accused is entitled to be bailed up to the time that there is an actual——

The Court: Till the judge finds he is a——

Mr. Marr: The very moment that a decision is rendered that this man is a fugitive from justice, that very moment his right to bail ceases; he is not entitled to bail after that. He is entitled to bail from the time that the affidavit is made up to the time that a court of competent jurisdiction finds he is a fugitive from justice, the moment the very moment he is declared to be a fugitive from justice, that is the end of it, so far as the right to bail is concerned.

The Court: Well, he is out on bail since then as a matter of fact.

Mr. Marr: Yes, because——

The Court: All I meant was this (both talking) ——

43 Mr. Marr: I told the British Government very firmly that I, individually, wouldn't be responsible for Mr. Collins being enlarged on bail; that was a responsibility I wouldn't assume, but if the British Government was willing for him to be out on bail, that was their affair; I had no objection, but for myself I wouldn't assume that responsibility.

The Court: Here is what I meant: To save a trip down here, I thought maybe he could surrender himself, and we could hear the habeas corpus on the second affidavit say tomorrow, but I judge from the history of the case he can't be in custody until the Secretary of State issues the warrant.

Mr. Marr: Can't do what?

The Court: You can't be in custody, at least you can't apply for a habeas corpus until the Secretary of State has——

Mr. Marr: Oh yes; if your Honor permits it, if he wants to try that out, I am perfectly willing.

The Court: It would suit my convenience very much if you would apply for a writ of habeas corpus under the second proceedings.

Mr. Spearing: May it please the Court, with all due deference to your Honor, and what has been going on between your Honor
44 and Judge Marr, I don't want to do anything that might be construed into an admission that your Honor has the right to follow the course which your Honor has indicated you would be willing to follow. We have here a judgment——

The Court: Well, if you want to get relief from the second, you are bound to apply for a habeas.

Mr. Spearing: No; I wasn't talking about a habeas corpus. I was talking about disregarding a judgment which your Honor has rendered some two years ago. We have a judgment rendered on February the 21st, 1919, and as I understand it now, the suggestion is that this judgment will be entirely disregarded.

The Court: It is not a final judgment, and therefore it is in the court, and I can make any judgment I see fit. In fact, in view of the fact that the Supreme Court has expressed doubt as to the right of the commissioner to hear any further testimony, it will certainly be my duty to make a final disposition of the case in response to the suggestion of the Supreme Court in that regard.

Mr. Spearing: Well, of course your Honor may disregard the judgment, but with all due deference, it does not seem to me your Honor has the right to disregard this judgment.

The Court: If it was a final judgment, of course I wouldn't,
45 but that is what the Supreme Court says it is not, it is not a final judgment.

Mr. Spearing: They say it is not a final judgment?

The Court: Let me ask you this. Suppose they had said straight out it was an unauthorized order to direct the commissioner to hear further testimony, wouldn't you think that under that decision so handed down I could modify the judgment?

Mr. Spearing: If they said that this was an unauthorized judgment, then it wouldn't have been any judgment at all, they set it aside, but they didn't say it was an unauthorized judgment, they made the suggestion it was not——

The Court: I don't doubt my right to modify or alter an order that is not a final order, at any time.

Mr. Spearing: Here is the reason for making those two fresh affidavits, that the applicant didn't want to act upon this judgment. I recall distinctly that when your Honor indicated, when you had the habeas corpus proceedings before you, when you indicated what your conclusion was, or you expressed your willingness to do one of two things, either render one separate judgment, discharging the writ as to one case, and another judgment maintaining the right as to the other case, or you would put that conclusion into one judgment, and, on consideration, counsel, my friend on the other side, took advantage of the suggestion to put it in one. Now he
46 finds he is in this position. He doesn't want to come under this judgment, because, with all frankness, counsel knows, and I know, that if we come under this judgment, whether the right

to do so will be granted or not, I shall apply to Judge Foster for the privilege of taking testimony in all of the cases. Now I submit, in all candor, that I——

The Court: Well, you could do that just as readily under the new ones.

Mr. Spearing: No, we could not, because under the new ones there wouldn't be any remand, if your Honor carries out the proceedings and your Honor carries out the plan suggested in the discussion, it can not be done, and that is just the very thing counsel is attempting to avoid.

The Court: Why should I not pursue this plan in pursuance of my previous holdings?

Mr. Spearing: Even if your Honor carries out the plan, if all three affidavits—and that is a thing I don't think you have a right to do—either all consolidated and set up substantially the same facts, the only difference being the names of the parties, the amount involve and the character of the jewelry, substantially all the other facts are the same, certainly the substantial facts are the same—it does not seem to me that we ought to be put to the extremity of having two cases where there may be an appeal either by the
47 British Government or by Collins, because manifestly, if the judgment is rendered against Collins, we shall appeal, and I assume judging by the entire course pursued by the British Government before, the writ is finally granted, the British Government will appeal. Now it does seem to me we ought not, for the convenience of either litigant, we ought not——

The Court: What is the use of doing all that——

Mr. Spearing: What's that, your Honor?

The Court: I should say, as a matter of procedure, it would have been simpler to dismiss the first proceeding and make all three affidavits on a new proceeding.

Mr. Spearing: But that has not been done.

The Court: Now the matter has proceeded so far, it would be easier to have the new proceedings completed, so what is the use of arguing about the other?

Mr. Spearing: With all due deference, I don't think your Honor ought to follow the course which you have indicated you are willing to follow. That is why I was addressing myself on that point, because we have *nor* heard practically one case, and now it seems to me in order that the British Government——

The Court: Well, of course the British Government presented them in three separate cases, and if they see fit by order of consolidation to have them become one, they can do so, but in so
48 far as that is concerned, there is no obligation on the part of the British Government to join them.

Mr. Spearing: No; but we are dealing now with the situation as it is.

The Court: We are dealing with a situation in which there is already one case in which the Secretary of State has issued a warrant, and the second case in which other two warrants are joined and not three.

Mr. Spearing: No; the Secretary of State issued one warrant, and I am led to believe—frankly I don't know but I am led to believe—this warrant of extradition must refer to the three cases, because the certificate of Judge Foster as affecting those three cases, distinctly refers to each one of them, and I assume that the certificate from the Secretary of State refers to those three cases. Now if that be true, manifestly the Marshal cannot act upon a warrant referring to three cases when only one still holds good, I submit, there being one case before your Honor, and that is all, there being one warrant from the Secretary of State, whether the three cases were named in that warrant or not, that there should still be one case before your Honor, and before the Court, and that it should not be split up.

The Court: I understood you to insist it was split up, that
49 this second proceeding was a different proceeding?

Mr. Spearing: That is absolutely true.

The Court: If you take a contrary view, it is a simple proposition, of course.

Mr. Spearing: Oh no. That is one of my complaints against Judge Foster, that he was splitting up the case and that he had no right to hear on those two affidavits. I am talking about splitting up this one case, and I have always contended that they ought not to split up a case, and I urge, if the Court please, that your Honor ought not to split the case, because your Honor got the case on one petition for a Habeas Corpus, and rendered one judgment, and there was one certificate of extradition, one warrant of extradition, and that was the matter that was before your Honor, and I submit that on that your Honor can not so divide that one case, divide that one petition, divide that one warrant of extradition.

The Court: Well, I certainly can make an order that holds him on one warrant and not on the other. You may have to apply for a new warrant after that, but it is certainly competent for the District Court to order his discharge on part of it and have him held on the other part of it.

Mr. Spearing: Of course I don't know what course——

The Court: Why wouldn't it be just as easy for Judge Marr
50 to dismiss the whole lot—discharge him as to the whole first proceedings and institute another proceeding on the good affidavits, then you wouldn't be confronted with the proposition as to whether I should let him go on part and hold him on part.

Mr. Marr: That, it seems to me, your Honor, has no basis upon which to rest. Suppose there came up to you three cases. Suppose your Honor had examined the testimony for the purpose of finding whether any testimony had been adduced in this case, that you should find that in part of the case there was no evidence of criminality whatever, not a particle of evidence of criminality, but that in one of the cases submited to your Honor there was evidence of criminality, what would be the proper judgment to render in a case of that sort? Wouldn't it be to maintain the writ of habeas corpus so far as this case was concerned in which no evidence of criminality was found and to refuse the writ of habeas corpus in so far as that affidavit was concerned where criminality was disclosed——

The Court: One minute; I want to——

Mr. Maria: That is the way it looks to me.

The Court: I told you that is my view of my order, but that may invalidate the warrant issued before it was made. The warrant was issued on the basis of the then pending charges or affidavits. Well now, habeas corpus is granted as to two of them, and it may be
51 that same warrant would not be valid, because on that warrant they could try him on all three charges, and the order of the court was to keep him from being tried except on the one that was maintained.

Mr. Marr: It may be necessary to get a new warrant, but that new warrant would be based, not upon the finding of the commissioner, but upon your Honor's finding on the petition of habeas corpus. Now so far as——

The Court: Wait a minute. Suppose it goes no further than up there. Is it not going to be more trouble for you to get that warrant from a habeas corpus warrant than it would be to file another affidavit and start out entirely anew? Is not the State Department going to raise the same or similar——

Mr. Marr: The trouble about the whole business is this. The Collins case has been in this country so long it has almost acquired the right to American citizenship, almost the right to be naturalized, and it is getting old and I would really like to get rid of the case. Now it seems to me this proposition of law is absolutely sound, there is no controverting, that if three affidavits, or a dozen affidavits were made against the accused, and the commissioner commits him on all the dozen of those affidavits, a writ of habeas corpus is applied for, and your Honor, sitting as judge on that habeas corpus, ex-
52 amining the testimony that is adduced, finds that in certain cases there is not one particle of evidence——

The Court: I know, I agree with you on that.

Mr. Marr: Well, that is the way it looks to me.

The Court: That don't meet the difficulty,—so that they will let the old warrant stand or give you a new warrant on the habeas corpus?

Mr. Marr: I should say it strikes me——

The Court: Wait a minute. Let me suggest this: Is not the basis of the State Department's action——

Mr. Marr: There is one thing——

The Court: Wait. —the finding of the extradition commissioner. Well, you run counter to that proposition in presenting the record of the District Court and not of the commissioner as the basis for the issuance of the warrant. We can't issue a warrant except on the findings on the extradition commissioner.

Mr. Marr: I don't think that at all.

The Court: Well, you take the risk of that; I do not.

Mr. Marr: Well, I will tell you the way——

The Court: I am perfectly willing to make the order just like I think originally——

Mr. Marr: I think this is the way, if your Honor will allow
53 me. I have been fooling with this Collins case so long, it has been going over from month to month and from year to

year, and I am very anxious to get a final judgment. If we go to Washington and we lose the case there, why I would rather begin all over again than take two or three bites at it before in Louisiana. In the first place I will have to make my affidavit, and then an application would be made to your Honor for a habeas corpus——

The Court: Well, that will be under these other——

Mr. Marr: How is that, your Honor?

The Court: It will be under the other two affidavits, so you are no worse off in that respect. As a practical matter, I think you are taking an unnecessary chance. You might as well dismiss the whole original ones and start all over again. However, as I say, I will make the order so as to dismiss the writ as to the good affidavit and grant the writ as to the other two.

Mr. Marr: I take it. Another thing, your Honor. As a matter of fact when the Secretary of State comes to decide whether or not he will issue his warrant for extradition, I take it that he will act upon that case just as he has in this. He will look at the decision of the Supreme Court of the United States on the question. I should think that is what he would do, and I would rather just take my chance.

54 The Court: All right.

Mr. Spearing: If your Honor please, I want to reserve my rights, if your Honor concludes to enter such an order, and protest against it, and protest against your Honor doing it, and I do it on the ground that we have here a judgment, and it is not competent for the Court to disregard this judgment and split it up, the judgment we are under here to-day, under any petition or any proceeding to consider this judgment or its effect in any manner, shape or form, and that the question of the disposition of the judgment of February 21, 1919, entirely new matter is injected into the case after the matter which was up for consideration to-day was presented to the Court, and that it is—we are not ready to argue that point of the case, we didn't come prepared to meet that issue at all, we had no idea when the case was fixed for to-day that the question of modifying, changing or disregarding the judgment of February 21, 1919, would be brought up or injected into the case, and therefore we protest and object to the court, protest against and object to the court modifying, changing or disregarding that judgment in any manner shape or form.

The Court: Well, the only other question is; you are going to apply for a habeas corpus under the second set of affidavits. What is your objection to having that heard say to-morrow?

55 Mr. Spearing: If your Honor please, under the view we have already expressed, and the view we have of this case, and the action of the Secretary of State, this second set of affidavits in these two cases have absolutely no legal binding force or effect, and we don't care to do anything that might be construed as admitting that they have any legal force or effect.

The Court: If you apply for his discharge under the idea they are not valid, that would not be waiving your rights, in fact that is

the only way you can raise it, by writ of habeas corpus, if you don't file a writ, you have to acquiesce in it.

Mr. Spearing: Yes, but the situation now is, there is no warrant by the Secretary of State. On the contrary, the Secretary of State has refused to issue a warrant.

The Court: It would only be done by him surrendering himself to the Marshal. As long as he is out on bail you can't apply for a habeas corpus. You can, however, easily obviate that by permitting him to surrender himself and then applying for a writ.

Mr. Spearing: That is not the point I was addressing myself to. I don't make the point that he is not in custody. I say that the Secretary of State has refused to issue the warrant, and therefore until the Secretary of State issues his warrant on those two
56 cases, Collins has nothing to fear.

The Court: Well, I guess you are right on that.

Mr. Spearing: And therefore there is no necessity for applying for a writ. The necessity for a writ has not yet arisen, and unless the Secretary of State changes his mind and his plan, the necessity for a writ under this second set of affidavits will never arise.

The Court: Well, I guess that is sensible too. I was only anxious to avoid another trip here, but I see it can't be accomplished.

Mr. Spearing: I want to say, your Honor, I have no disposition to cause you the least inconvenience, but I know your Honor will appreciate that in a matter of this kind——

The Court: Well, if you prepare the order to be presented to me to-morrow morning, I will stay here and give it in proper shape. It seems to me the order ought to be this; that that order, originally or modified to the extent that the writ is, as to the good affidavit, is left as it stood in that order, and as to the two other affidavits, in view of the fact there has been no examination in that case, and that the prosecutor has filed other affidavits covering the same subject matter, under which the judge has certified, they no longer rely on those and therefore I discharge the prisoner as to those
57 two affidavits, and you have got an order that turns the custody of the prisoner over from the District Court to the extradition officers, and discharging altogether in the other cases, so that in no sense is he in the custody of the District Court or is the case before the jurisdiction of the District Court.

Mr. Spearing: And on which you have rendered final judgment, finally disposing of the case?

The Court: The subject matter of the case is the custody of the prisoner; if he is directed to be turned over to the extradition officers on one charge and discharged on the other two. That disposes finally of the subject matter of the case, the custody of the prisoner.

Mr. Spearing: So far as the other warrants are concerned, I take it your Honor's decision has nothing to do with them.

The Court: It wouldn't refer to them at all, except as reciting you are relying on them, and as a reason for dismissing—for discharging the prisoner on the other two affidavits in the original case. I think it ought to recite the proceedings you have taken under the new affidavits as a ground for proceeding no further in

the original case on those two affidavits and discharging the prisoner from custody on those two affidavits.

Mr. Marr: I am anxious to have the matter in such shape that we will not be met again at Washington with a statement
58 that the proceedings didn't come from any lower court at all—something the court raked up and found out, and I don't want to be put in such a position again.

The Court: I think you are right. What you first want to do is to satisfy the State Department they have the right to issue a warrant under the second affidavits.

Mr. Marr: Yes.

The Court: To do that you have to show this court has no longer jurisdiction of the case and no longer has the custody of Colonel Collins, and if you have an order drawn up that way and it answers your purpose, I will be glad to sign it.

The Court: Judge Marr, if you will draw up the order and be down here to-morrow at 10.00 o'clock to-morrow, I will be here, and Mr. Spearing can be here and present any objections he may have to its form.

59 *Judgment.*

Filed Oct. 25, 1921.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Whereas under date of February 21st, 1919, a judgment was rendered herein denying relator's application for habeas corpus insofar as the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza is concerned, but as to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and from Ganeshi Lall & Sons the writs were granted and relator remanded to await further proceedings in said last two named affidavits, and as to the said two affidavits this cause was remanded to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana, and whereas it has been brought to the attention of the Court that under said order remanding, no examination has been held, but on the contrary that the prosecution under said affidavits has been definitely abandoned by the British Consul General, and other affidavits have been filed by said British Consul General.

It is now adjudged and decreed that as to the commitment of relator to await the action of the President of the United States on the application of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus be denied, and relator is remanded to the custody of Victor Loisel, U. S. Marshal for the Eastern District of Louisiana and it is further ordered, adjudged and decreed that as to the commitment based on the charge of obtaining prop-

erty by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted; and as to the two latter commitments and the charges on which they are based, the petitioner is discharged.

Given this 25th day of October, 1921.

(Signed) W. I. GRUBB,
District Judge.

60 *Petition and Order for Appeal.*

Filed Nov. 28, 1921.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

Petition & Order for Appeal.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents:

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 25th. day of October 1921 and that petitioner is aggrieved thereby and desires to take an appeal to the Honorable the Supreme Court of the United States with supersedeas that petitioner has prepared and files herewith his assignment of error and is ready and prepared to furnish a bond with good and solvent surety in such amount as the Court may order conditioned as the law directs, for the payment of damages and costs of appeal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from the judgment rendered and signed in these proceedings on the 25th. day of October 1921 returnable to the Honorable the Supreme Court of the United States within the time and in the manner pointed out by law upon petitioner furnishing a bond for such amount as may be ordered by this court conditioned as the law directs and for the payment of damages and costs of appeal or any other penalty that may be inflicted or named; and that citation of appeal issue.

(Signed) CHARLES GLEN COLLINS.
(Signed) J. ZACH SPEARING,
" R. B. HOWELL, *Attys.*

Petition allowed Nov. 25/21.

(Signed) W. I. GRUBB,
District Judge.

61 *Order.*

The above and foregoing petition of Charles Glen Collins praying that he be allowed to appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 25th. day of October 1921 and that a certified copy of the transcript of the record upon the said order and decree be transmitted to the Supreme Court of the United States, and the Court being of the opinion that the said Charles Glen Collins is entitled to the appeal as prayed for by him

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 25th. day of October 1921 be and the same is hereby allowed and that a certified transcript of the record of all the proceedings herein and of the returns and pleadings in this case duly authenticated be forthwith transmitted to the Supreme Court of the United States.

It is further ordered, that the bond of appeal conditioned as the law directs and for the payment of damages and costs of appeal, or any other penalty that mey be inflicted or named, be and the same is hereby fixed at the sum of Five Hundred & 00/100 ($500.00) Dollars and that a stay of procedure upon the said judgment and decree appealed from be and the same is hereby granted.

This 25 day of Nov. 1921.

(Signed) W. I. GRUBB,
District Judge.

62 *Assignment of Errors.*

Filed Nov. 28, 1921.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

Assignment of Errors.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles Glen Collins, petitioner herein by J. Zach Spearing, his Attorney, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein.

1st. The Court erred in dismissing the writ of Habeas corpus as to the charge by Mahomed Alli Zaimel Ali Raza, sued out by petitioner herein.

2nd. The Court erred in denying the writ of habeas corpus as to one affidavit and granting the writ of habeas corpus in part as to the other affidavits, but the Court should have granted the writ of habeas corpus in its entirely and should have ordered petitioner discharged from custody on each and all of the charges.

3rd. The Court erred in holding that petitioner was lawfully held in custody by the Marshal of the United States for the Eastern District of Louisiana to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

4th. The Court erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshal of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

5th. The Court erred in holding that the informations filed against petitioner before the Esplanade Police Court of Bombay, British India charging petitioner with having committed
63 the offense of cheating under Section 420 of the Indian Penal Code were sufficient under the extradition treaties between the Government of the United States and the Government of Great Britain proclaimed November 10th. 1842 and the supplementary extradition treaty between the same Countries proclaimed April 22nd. 1901, or any other convention or treaty in force between those two Countries, to arrest hold or detain petitioner, or to justify his extradition because the offense of cheating is not one of the offenses for which a person, and particularly for which petitioner, could be extradited.

6th. The Court erred in not holding that petitioner was denied due process of law because Hon. Rufus E. Foster, United States District Judge sitting as Extradition Commissioner, refused petitioner the right and opportunity accorded him by the laws of and practice in the State of Louisiana to testify or to make a voluntary declaration in his own behalf and also of the refusal by the said Extradition Commissioner of the right and opportunity accorded him by the said laws and practice in the State of Louisiana to have other witnesses than himself examin- in his own behalf and the like refusal of the right and opportunity to produce and file in evidence documentary evidence in his behalf.

7th. The Court erred in not holding that petitioner was denied by Hon. Rufus E. Foster, the right granted to and possessed by him under the tenth article of the treaty between the United States and the Kingdom of Great Britain proclaimed November 10th. 1842 to the protection of the laws of and practice in the State of Louisiana in which petitioner was arrested and according to the laws of and

practice in which said State petitioner had and has the right to testify and make a voluntary declaration in his own behalf and to have witnesses examined and to introduce and to have admitted documentary evidence in his own behalf before a Committing Judge or Magistrate.

8th. The Court erred in not holding that petitioner was denied by the said Hon. Rufus E. Foster the protection granted to and possessed by him under the fifth amendment of the Constitution of the United States of America in that he had been and is being deprived of his liberty without due process of law because
64 under the treaties and conventions between the Kingdom of Great Britain and the United States of America it is expressly provided that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed," and that according to the laws of and practice in the State of Louisiana in which State petitioner was arrested he was entitled to testify in his own behalf and was also entitled to have witnesses examined in his own behalf before the Committing Judge or Magistrate and likewise to have introduced and admitted documentary evidence in his own behalf and that each and all of his rights were denied to your petitioner by the said Hon. Rufus E. Foster.

9th. The Court erred in not holding that no legal proof was submitted to or produced before the Hon. Rufus E. Foster, of the commission by petitioner of the crime or offense mentioned in the complaints of Thomas F. Carlisle, British Consul General at the City of New Orleans, or of the crime or offense mentioned in the authenticating certificates attached to the documents which were admitted in eidence or mentioned in the information or charges filed before the Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either of said crimes or offenses, or of any other crime or offense.

10th. The Court erred in not holding that no legal proof was submited to or produced before Hon. Rufus E. Foster, on which reasonable ground for a belief that petitioner had committed the crime or offense mentioned in the complaints of Hon. Thomas F. Carlisle, British Consul General at the City of New Orleans or mentioned in the authenticating certificates attached to the documents offered in evidence or mentioned in the informations or charges filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or any other
65 crime or offense could be based.

11th. The Court erred in not holding that none of the evidence papers or exhibits which were submitted to the Hon. Rufus E. Foster and by him admitted in evidence over the objection and

protest of petitioner were authenticated in accordance with the provisions of the statutes in such cases made and provided so as to entitled them to be received in evidence in the proceedings before the said Hon. Rufus E. Foster.

12th. The Court erred in not holding that the transactions referred to in the depositions and documents which were admitted in evidence over the objection and protest of petitioner are not crimes nor offenses under the laws of the State of Louisiana in which your petitioner was arrested, nor under the laws of British India, where it is alleged the said transactions took place, but the Court should have held that the said transactions constituted and were mere commercial transactions in which credit was freely and voluntarily extended.

13th. The Court erred in not holding that even if the said transactions are criminal according to the laws of British India, they do not constitute an offense which, under the treaties and conventions in force between the United States and the Kingdom of Great Britain, are extraditable or for which extradition can be had.

14th. The Court erred in not holding that there is a fatal variance in each of the three sets of documents from Bombay, India, offered, introduced and admitted in evidence over protest by petitioner between the charge brought against petitioner in the Esplanade Police Court of Bombay, India, which is the offense of cheating under Section 420 of the Penal Code of India and the offense mentioned in the authenticating certificates of the Secretary for the Indian Government and the Consul General of the United States at Calcutta, India, which is the offense of obtaining valuable property by false pretenses, which said two offenses are not the same but are different in nature and character in this that the offense of cheating
66 under Section 420 of the Penal Code of India which is not extraditable under the treaties and conventions existing between the United States and the Kingdom of Great Britain is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of making of the promise and the gist of the offense of obtaining valuable property by false pretenses which is extraditable is, according to the laws enforced in the State of Louisiana, a false representation concerning a past or present fact.

15th. The Court erred in not holding that petitioner was being deprived of his liberty without due process of law and in violation of the provisions of the treaties and conventions between the United States and the Kingdom of Great Britain and particularly in violation of the provisions of the tenth article of the treaty between the said two countries dated August 9th, 1842, and proclaimed November 10th, 1842, and in violation of the fifth amendment to the Constitution of the United States of America and in violation of the laws of Louisiana.

16th. The Court erred in disregarding, modifying and changing the judgment which was rendered in these proceedings on the 21st day of February 1919.

And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 25th day of October 1921 for the errors aforesaid and for other errors in the record and proceedings herein may be reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of habeas corpus issued in these proceedings and discharging petitioner from the custody of the Marshal of the United States for the Eastern District of Louisiana and restoring petitioner to his liberty.

(Signed) CHARLES GLEN COLLINS.
(Signed) J. ZACH SPEARING,
" R. B. HOWELL,
Attys.

Presented Nov. 25/21.

(Signed) W. I. GRUBB,
D. J.

67 *Bond of Appeal.*

Filed Nov. 28, 1921.

Bond.

Know all men by these presents, That, We, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Frank M. Miller, U. S. Marshal and Harry J. Carter, Clerk of the U. S. District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred & 00/100 ($500.00) dollars to be paid to the said parties or any of them, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of November in the year of our Lord, One thousand nine hundred and twenty-one.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said court, entitled In the matter of the Application of Charles Glen Collins for Writ of Habeas Corpus and Certiorari a judgment was rendered against the said Charles Glen Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's office of the said Court

to reverse the judgment in the aforesaid suit, and a citation directed to Victor J. Loisel, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United lumbia, within 30 days from the date thereof.
States Supreme Court, to be holden at Washington, District of Co-

Now, the condition of the above obligation is such, That if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) UNITED STATES FIDELITY & GUARANTY CO.,
By GEORGE M. B. CONRAD,
Attorney in Fact.

(Signed) CHARLES GLEN COLLINS. [SEAL.]

Sealed and delivered in presence of
(Signed) J. ZACH SPEARING.

Approved by:
W. I. GRUBB,
D. J.

Nov. 25/21.

Bail Bond.

68

Filed Dec. 3, 1921.

UNITED STATES OF AMERICA,
Eastern District of Louisiana,
New Orleans Division, ss:

Be it remembered, that on this 3rd day of December, A. D., 1921, before me, Henry J. Carter, Clerk, United States District Court for the Eastern District of Louisiana, New Orleans Division, personally came Charles Glen Collins, Principal and John W. McGrath, of #2255 Carondelet St., New Orleans, Louisiana, Surety and jointly and severally acknowledged themselves to owe the United States of America the sum of Ten Thousand Dollars, to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such, that if the said Charles Glen Collins, Principal shall personally appear before the Honorable Rufus E. Foster, United States District Judge of the District Court of the United States in and for the Eastern District of Louisiana on the — day of November term, 1921, to be begun and held at the City of New Orleans, at 11 o'clock, A. M., and from time to time thereafter to which the case may be continued and then and there to appear before the said Judge and the said Court at the term above specified and from term to term thereafter and shall abide whatever

rder and judgment of the said Court and the said Judge named, in he matter entitled "United States Ex Rel., Charles Glen Collins, ver- us Frank M. Miller, United States Marshal et al. No. 15,959 of the locket of the United States District Court for the Eastern District of Louisiana, and shall not depart the Court without leave, then and n that case, this obligation is to be null and void, but otherwise to be n full force and effect.

(Signed) CHARLES GLEN COLLINS.
(Signed) J. W. McGRATH.

Taken and acknowledged before me on the day and year first above written.

[SEAL.] (Signed) H. J. CARTER,
Clerk United States District Court,
Eastern District of Louisiana.

69 UNITED STATES OF AMERICA,
Eastern District of Louisiana,
New Orleans Division, ss:

John W. McGrath, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at #2255 Carondelet Street, in the City of New Orleans, Louisiana, in said District that he is a freeholder in the City of Brookhaven, Mississippi, that he is worth the sum of Ten Thousand ($10,000.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real estate consisting of lots and stocks.

(Signed) J. W. McGRATH.

Sworn to and subscribed before me this 3rd day of December, A D., 1921.

[SEAL.] (Signed) H. J. CARTER,
Clerk United States District Court,
Eastern District of Louisiana.

70 Clerk's Office.

I, H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 69 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case entitled United States, ex rel. Charles Glen Collins versus Frank M. Miller, United States Marshal, No. 15,959 of the Docket of said Court, as made in accordance with the Agreement of Counsel for transcript, copied therein.

Witness my hand and the seal of the said court at the City of New Orleans, La., this 20 day of December, A. D., 1921.

[Seal U. S. District Court, Eastern District of Louisiana.]

H. J. CARTER,
Clerk.

71 Mr. Spearing.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Victor Loisel, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a petition and order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Charles Glen Collins, is Appellant, and Victor Loisel, United States Marshal for the Eastern District of Louisiana, is Appellee, in the cause entitled "United States, ex rel., Charles Glen Collins, versus Frank M. Miller, United States Marshal," No. 15,959 of the Docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause, if any there be, why the judgment rendered against the said Charles Glen Collins, as in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 1st day of December in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] (Signed) RUFUS E. FOSTER,
Judge.

Clerk's Office.

A true copy.

H. J. CARTER, *Clerk.*

New Orleans, La., Dec. 1, 1921.

72 [Endorsed:] 4620. Return. United States District Court, Eastern District of Louisiana. No. 15,959. United States ex rel., Charles Glen Collins, vs. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Dec 2, 1921. Hu. J. Loisel, Dep. Clerk.

Received by U. S. Marshal, New Orleans, La., December 1, 1921, and on the 2nd day of December, 1921, I served the original of which this writ is a certified copy on Victor Loisel, U. S. Marshal for the Eastern District of Louisiana, by handing the same to him in person.

VICTOR LOISEL,
U. S. Marshal,
By T. I. GALBRITH,
Dep. U. S. Marshal.

73 Endorsed on cover: File No. 28,627. E. Louisiana D. C. U. S. Term No. 672. Charles Glen Collins, appellant, vs. Victor Loisel, U. S. Marshal for the eastern district of Louisiana. Filed December 31st, 1921. File No. 28,627.

a Supreme Court of the United States, October Term, 1921.

No. 672.

CHARLES GLEN COLLINS, Appellant,

vs.

VICTOR LOISEL, United States Marshal for the Eastern District of Louisiana.

Stipulation.

It is agreed and stipulated by counsel for Charles Glen Collins, Appellant, and Victor Loisel, United States Marshal, Appellee, that the printed transcript in Charles Glen Collins, Appellant versus Frank M. Miller, United States Marshal for the Eastern District of Louisiana, No. 977 and in Tom F. Carlisle, British Counsul General versus Charles Glen Collins, No. 978, October term 1918 of the Supreme Court of the United States, a printed copy of which accompanies this stipulation, shall be printed and made a part of the transcript of the record in this case being No. 672 October Term 1921 of the Supreme Court of United States.

New Orleans, La., March 31st, 1922.

GUION MILLER,
J. ZACH SPEARING,
Attorneys for Charles Glen Collins, Appellant.
ROBERT H. MARR,
Attorney for Victor Loisel, U. S. Marshal.

(27,063 AND 27,064)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 977.

CHARLES GLEN COLLINS, APPELLANT,

vs.

FRANK M. MILLER, U. S. MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 978.

TOM F. CARLISLE, BRITISH CONSUL GENERAL, APPELLANT,

vs.

CHARLES GLEN COLLINS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS, Appellant,

versus

FRANK M. MILLER, United States Marshal, Appellee.

J. Zach Spearing, Esquire, for Appellant.
Robert H. Marr, Esquire, for Appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable within Thirty (30) Days from the Eighth (8th) Day of March, 1919, at the City of Washington, D. C.

1 *Petition.*

Filed January 8, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the United States District Court for the Eastern District of Louisiana:

The petition of Charles Glen Collins respectfully represents and shows to this Honorable Court, as follows:

1. Your petitioner is imprisoned and restrained of his liberty in the House of Detention in the City of New Orleans, in the State of Louisiana, in the custody of Frank M. Miller, United Stafes Marshal for the Eastern District of Louisiana, by virtue of two certain warrants dated the 31st day of October, 1918 and the 21st day of November, 1918, respectively, issued by Honorable Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, copies of which warrants are hereto annexed, marked, respectively, "Exhibit A" and "Exhibit B," and made a part hereof.

2. On the 12th day of November, 1917, your petitioner was arrested and taken into custody by the said Frank M. Miller, United States Marshal for the Eastern District of Louisiana, under and by

virtue of a warrant dated the 5th day of November, 1917, issued by Honorable Sam M. Hitchcock, United States Commissioner for Southern District of New York, a copy of which warrant is also hereto annexed, marked "Exhibit C," and made a part hereof.

2 3. The said last mentioned warrant was issued by the said Commissioner upon a complaint purporting to have been made by C. Olive Bayley, Esquire, British Consul-General at the City of New York in the State of New York, before the said Commissioner, a copy of which complaint is also hereto annexed, marked "Exhibit D" and made a part hereof.

4. On the 18th day of October 1918, your petitioner was arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 18th day of October 1918, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed, marked "Exhibit E," and made a part hereof.

5. The said last mentioned warrant was issued by the said Judge upon a complaint purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Judge, a copy of which complaint is also hereto annexed, marked "Exhibit F," and made a part hereof.

6. On the 18th. day of October, 1918 and again on the 8th. day of November 1918, your petitioner was arrested and taken into custody by the said United States Marshal under and by virtue of two warrants dated the 18th. day of October 1918 and the 8th. day of November 1918 respectively, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrants are also annexed hereto, marked "Exhibit C," and made a part hereof.

3 7. The last mentioned warrant was issued by the said Judge upon complaints purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Commissioner, a copy of which complaints are also hereto annexed, marked "Exhibit H," and made a part hereof.

8. On the 28th. day of October 1918, your petitioner was arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, and after a hearing held on the 28th. day of October 1918, and the 30th. day of October, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit A) therefor to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

9. On the 21st day of November, 1918, your petitioner was again arraigned before the Honorable Rufus E. Foster, one of the Judges

of this Court, and after a further hearing held on the 21st day of November, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then
4 and there issued his warrant (Exhibit B) therefor, to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

10. Your petitioner's detention and imprisonment is illegal and unconstitutional, because:

(*a*) The aforesaid complaints are based upon certain Informations filed against your petitioner before the Esplanade Police Court of Bombay, India, charging your petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code, and that such offense is not an extraditable one under any extradition convention or treaty in force between the United States of America and the Kingdom of Great Britain.

(*b*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of the aforesaid hearings, due process of law, in that he was denied the right and opportunity accorded him by the laws of the State of Louisiana, to make a voluntary declaration on his own behalf, and was also denied the right and opportunity accorded him by said laws to have other witnesses than himself examined upon his own behalf.

5 (*c*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the right possessed by him under the Tenth Article of the Treaty between the United States of America and the Kingdom of Great Britain of August 9th, 1842, to the protection of the laws of the State of Louisiana, in which State your petitioner was arrested; and according to the laws of which State your petitioner had the right to make a voluntary declaration and to have witnesses examined in his own behalf before the committing Judge or Magistrate.

(*d*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the protection of the Fifth Amendment to the Constitution of the United States of America, in that he has been deprived of liberty without due process of law, the treaty between the Kingdom of Great Britain and the United States of America expressly providing that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been commit-ed," and that according to the laws of the State of Louisiana, in which State your petitioner was arrested, as aforesaid, he was entitled to testify on his own behalf, and also was entitled to have witnesses examined in his own behalf before the committing Judge or Magistrate and that these rights were denied to your petitioner.

(*e*) No legal proof was submitted to, or produced before,

6 the Honorable Rufus E. Foster, of the commission by your petitioner of the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or of the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court, of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or of any other crime or offense.

(*f*) No legal proof was submitted to, or produced before, the Honorable Rufus E. Foster, on which reasonable ground for a belief that your petitioner had committed the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or either or any of said crimes or offenses, or any other crime or offense, could be based.

7 (*g*) None of the evidence, papers and exhibits which were submitted to the Honorable Rufus E. Foster, over the objection and protest of your petitioner, were authenticated in accordance with the provisions of the statutes in such case made and provided, so as to entitle*d* them to be received in evidence in the said proceeding.

(*h*) The transactions proved by the depositions that were admitted in evidence over the objection and protest of your petitioner are not criminal in their nature, according to the laws of the State of Louisiana, in which State your petitioner was arrested and they are not even criminal according to the laws of British India, but constitute commercial transactions in which credit was freely and voluntarily extended to your petitioner by each and every one of the merchants therein named.

(*i*) Even if said transactions are criminal according to the laws of British-India, they constitute, under said laws, the offense of cheating as prescribed by Section 420 of the Penal Code of India and the said offense is not an extraditable one under either of the three extradition treaties or conventions in force between the United States of America and the Kingdom of Great Britain.

(*j*) There is a fatal variance in each of the three sets of documents forwarded to this Country from Bombay, India, in that in each set of documents it appears that the charge brought against your petitioner is that of the offense of cheating under Section 420 of the Penal Code of India, while in the authenticated certificates of the Secretary for the Indian Government and of the Con-

8 sul-General of the United States at Calcutta, India, the charges brought against your petitioner, are stated to have

been of an entirely different nature and character; namely, that of obtaining valuable property by false pretenses.

(*k*) There is a material and radical difference between the non-extraditable offense of cheating under Section 420 of the Penal Code of India, and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is, according to the laws in force in the State of Louisiana, a false representation concerning a past or present fact and that a promise is not a pretense within the meaning of the Louisiana statute, even when the party making the same does not intend to keep it.

11. Your petitioner is advised and verily believes it to be true, that his imprisonment and detention aforesaid is illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, for the reasons aforesaid, and that your petitioner has been, and is being deprived of his liberty without due process of law, in violation of the said treaty and also in violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, in order that your petitioner may be relieved
9 of his unlawful detention and imprisonment, your petitioner prays that writs of habeas corpus and certiorari may issue out of this Court, directed to the person or persons having your petitioner in custody and to the said Honorable Rufus E. Foster, commanding them, and each of them, to produce the body of your petitioner before this Court, and to return all the proceedings had against him to this Court, and to do and receive what shall then and there be considered in the matter.

No previous application has been made for the said writs.

(Signed) J. ZACH SPEARING,
Attorney for Petitioner.

(Signed) CHARLES GLEN COLLINS.

STATE OF LOUISIANA,
City of New Orleans, ss:

Before the subscriber, a Notary Public in and for said City and State, personally appeared Charles Glen Collins, who being duly sworn, deposes and says:

That he is the petitioner herein; that he has read, and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to that matter he believes it to be true.

(Signed) CHARLES GLEN COLLINS.

Sworn to before me, this 27th day of December, 1918.

[SEAL.] (Signed) J. ZACH SPEARING,
Notary Public.

To the Clerk:

Let a writ issue as prayed for, returnable Saturday, January 11th, at 10 A. M.

Given this 8th day of January, 1919.
(Signed) W. I. GRUBB,
District Judge.

10 *Writ of Habeas Corpus.*

Issued January 8, 1919.

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, U. S. Marshal.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to bring and produce before this Court on Saturday, the 11th day of January 1919, at 10 a. m. the body of Charles Glen Collins, now in your custody in the House of Detention in the City of New Orleans, together with the cause of his caption and detention; there to abide what shall be awarded by the Court in the premises, and herein fail not under penalty of the law.

Witness, the Honorable Rufus D. Foster, Judge of said Court, at New Orleans, La., this 8th day of January in the year of our Lord one thousand nine hundred and nineteen.
[SEAL.] (Signed) H. J. CARTER, *Clerk.*

Clerk's Office.

A true copy.
(Signed) H. J. CARTER, *Clerk.*

New Orleans, La., January 8, 1919.

Marshal's Return.

Filed February 10, 1919.

Received by U. S. Marshal, New Orleans, La., Jan. 8/18, and on the same day month and year I served the original of which this is a certified copy, on Frank M. Miller, United States Marshal, for the Eastern District of Louisiana, by handing same to him in person at New Orleans, La.

(Signed) FRANK M. MILLER,
U. S. Marshal.
SAM W. TAYLOR,
Chief Deputy.

11 *Order Continuing Case Indefinitely.*

Extract from the Minutes, November Term, 1918.

New Orleans, Saturday, January 11th, 1919.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.
" Hon. W. I. Grubb, Judge.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, United States Marshal.

Proceedings Before Hon. W. I. Grubb, District Judge.

By agreement of counsel for the respective parties;
It is ordered by the Court that the application for a writ of habeas corpus fixed for trial this day, be continued indefinitely.

12 *Return of Frank M. Miller, United States Marshal.*

Filed Feb. 15, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Now, comes Frank M. Miller, United States Marshal for the Eastern District of Louisiana, who, by way of return to the writs herein applied for, says:

1.

That Charles Glen Collins is held by him in pursuance of judgments of the Honorable Rufus E. Foster, Judge of this Court, which said judgments read as follows:

"I find that the evidence produced against said Charles Glen Collins is sufficient in law to justify his commitment on charges of having obtained property by false pretenses.

It is further ordered, adjudged and decreed that said Charles Glen *Foster,* be committed to the House of Detention to be held for extradition to British India for trial on charges pending against him in the Chief Presidency Magistrate's Court at Bombay India, to abide the order of the President of the United States until the further orders of the Court."

That the said judgments were based upon findings on three separate affidavits charging said Collins with being a fugitive from the justice of India upon charges of obtaining property by false pretenses, and upon which said judgments warrants were issued and placed in the hands of your respondent, as recited by relator in his application for writs.

2.

Now, your respondent shows that the detention of relator is legal and constitutional, and respondent shows that, in each of said three cases, applications were made for the extradition of said
13 Colonel Charles Glen Collins on the ground that, in each of said cases, he stood charged in India with the crime of obtaining valuable property by false pretenses.

3.

Now, your respondent further shows that, in each of said cases, it is certified by A. H. Grant, Secretary to the Government of India in the Foreign Political Department, that the relator is:

"Charged with the crime of obtaining valuable property by false pretenses, alleged to have been committed in Bombay."

That, as to one of said charges, A. H. S. Aston, Chief Magistrate certified:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses under Section 420 of the Indian Penal Code, within the jurisdiction of my Court, in respect of jewelry valued at about two thousand pounds, the property of the firm of Ganeshilall & Sons, jewelers of Calcutta."

and said A. H. S. Aston, Chief Presidency Magistrate, as to another of said charges, certifies:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses at Bombay, under Section 420 of the Indian Penal Code, with respect

of a pearl button valued at seventeen hundred pounds, the property of Mahomed Helo Zaimel Ali Raa."

4.

And, your respondent further shows that the evidence deduced on the trial of each of these three several cases discloses a state of facts constituting crime, both under the laws of Louisiana, and under the laws of British India.

14

5.

Your respondent further shows that relator at no time offered to make any voluntary statement, but offered himself as a witness on his own behalf; and respondent shows that, in two of said cases, after having been sworn as a witness, the Judge declined to hear any evidence in defense of the charge, holding:

"No question of defense can come before this Court in an extradition matter; that is a question for the Court when the case is tried in the country that requests his extradition, the only question here is the question as to the identity of the accused, and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show, either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now, he was there at the time, and he admits he is the man."

To which ruling of the Court, Counsel for relator replied, "There is no doubt about that."

6.

And, respondent further shows that the other evidence offered by relator in his own behalf would not have been admissible, even had relator been on trial for the commission of the offence charged.

7.

And, your respondent further shows that, in the Raza case, said Collins offered himself as a witness in his own behalf and was duly sworn, examined, cross-examined and re-examined.

8.

And, your respondent further shows that the proof submitted was legal and competent, and that the sufficiency of said proof cannot be inquired into on habeas corpus.

15

9.

And, your respondent further shows that all the documents admitted in evidence by said Honorable Rufus E. Foster were authenticated, in accordance with the provision of law.

10.

And, your respondent further shows that the transactions disclosed by the evidence in each of said three several cases, constituted the obtaining of articles by false pretenses, and discloses a state of facts punishable as crime, both by the law of Louisiana and by the law of British India, as abundantly shown by the testimony of relator, examined as witness in his own behalf.

11.

And, your respondent further shows that there is no variance in the documents forwarded from Bombay, as hereinabove set out; in two of said cases, the charge is distinctly stated as that of obtaining property by false pretenses, which statement is contained both in the certificate of the Magistrate, and in the request for extradition; that, in the other of said cases, the affidavit is for cheating under the Penal Code of India, Section 420, and the request is for extradition to stand trial on a charge of obtaining by false pretenses. And, your respondent shows that, in said case last mentioned, the evidence discloses an obtaining by false pretenses.

12.

And, your respondent further shows that, in all three cases, the evidence disclosed the commission in British India of an extraditable offence.

Wherefore, the foregoing considered, respondent prays that the writs herein applied for be refused at relator's costs.

All other orders necessary and proper in the premises are also prayed for.

(Signed) ROBERT H. MARR,
For Respondent.

17 *Record, Exhibits, Evidence, Testimony, and Proceedings in the Matter of the Extradition Proceedings against Charles Glen Collins, Nos.* 15927, 15928, *and* 15936 (*Consolidated*), *Filed February* 21, 1919, *before Hon. W. I. Grubb, United States District Judge.*

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

Record, Exhibits and Testimony Transmitted by Hon. Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, to the Honorable Secretary of State of the United States of America, Department of State, Washington, D. C.

18 AFFIDAVITS OF COMPLAINANT, EXHIBITS, CERTIFICATES, AND DEPOSITION- OF WITNESSES.

Affidavit of Gerard M. Loly, British Vice Consul.

Filed Oct. 16, 1918.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed and said that he is British Vice Consul at the City of New Orleans; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretenses, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 7th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Pohoomul Bros. that he, the said Collins, was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for five thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; Whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he, the said Collins, had no right to draw a draft for five thousand pounds or for any amount on said Messrs. E. Curtice & Company; that by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said commercial firm of Pohoomul Bros. a pearl neck-

lace, valued at seventy-five thousand rupees; of the property of the said commercial firm of Pohoomul Bros.; that the said false and fraudulent pretenses were, to the knowledge of said Collins, at the time of making same false and fraudulent; and affiant further
19 says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

Affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon instructions received from the said Thomas F. Carlisle.

(Signed) GERARD M. LOLY.

Sworn to and subscribed before me this 16 day of October, 1918.
(Signed) RUFUS E. FOSTER, *Judge.*

20 *Affidavit of Tom F. Carlisle, British Consul General.*

Filed Oct. 26, 1918.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretenses, stands charged in the Chief Presidency Magistrate's Court at Bombay, India, with having, on or about February 7th, 1917, fraudulently, feloniously and falsely pretended to the commercial firm of Pohoomul Bros. that he, the said Collins, was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for Five thousand Pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and that in consequence thereof, said draft would be paid; Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary, was a bankrupt; that he, the said Collins, had not the right to draw a draft for five thousand Pounds on said Messrs. E. Curtice & Company, and then and there well knew that said draft would not be paid; that by means of said false, fraudulent and felonious pretences, the said Collins then and there obtained from said commercial firm of Pohoomul Bros. a pearl necklace valued at seventy-five thousand rupees, of the property of the said commercial firm
21 of Pohoomul Bros.; that the said false and fraudulent pretences were, to the knowledge of said Collins at the time of making them false and fraudulent, and affiant further says that said Collins is presently within the City of New Orleans, and within the

jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is made, is as follows:

The evidence taken on said charge in the Esplanade Police Court, Bombay, duly certified to under the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, duly certified to under Section 5271 of the Revised Statutes of the United States; the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried sheriff of the Sheriffdom of Lanarkshire, duly certified to under Section 5271 of the Revised Statutes of the United States, all of which said evidence is hereunto annexed as part hereof; and a telegram in Code from the British Secretary of State, for Foreign Affairs, received by the British Consul General at New York on November 3rd, 1917, a Code Translation whereof is hereto annexed as part hereof.

(Signed) T. F. CARLISLE.

Sworn to and subscribed before me this 26 day of October, 1918.

(Signed) RUFUS E. FOSTER, *Judge.*

22 *Translation of Telegram in Code from the British Secretary of State for Foreign Affairs, Received by the British Consul General at New York on November 3rd,* 1917.

No. 738.

Following telegram has been received from Governor of Bombay October 25th communicated by Secretary of State for India Begins. No. 8237. A warrant has been issued in this country for the arrest of the undermentioned person for the undermentioned offence. Apply for provisional arrest with a view to extradiction. Necessary documents will be sent as soon as possible through regular channels. Please acknowledge receipt of this by cable and also telegraph when accused has been arrested. Charles G. Collins till recently British army officer obtaining by false pretenses pearl necklace valued 75,000 rupees from Pohoomull Brothers at Bombay February 2nd last representing himself Lieutenant Colonel attached for duty to How Battalion Royal Marines on furlough. Left Bombay for Vancouver February 27th leaving draft dishonoured on presentation. About 6 feet holds himself upright athletic complexion florid hair scanty approximate weight about 13 or 14 stone recently at Quebec whence police state left October 1st for Ritz Carlton Hotel New York. Messrs. Pinkerton are understood to have been communicated with already. Person able to identify accused will be sent Ends.

Please take necessary action. Any further enquiry necessary should be addressed to Governor of Bombay direct. Secretary of State for India presumes application will be made to Emigration au-

thorities if action by them suitable also that if person to identify not needed, Governor of Bombay will be informed.

BALFOUR.

23 I hereby certify that the above is a true and exact translation of an original telegram in British Government Code from the British Secretary of State for Foreign Affairs to the British Consul General New York which is now in my possession.

[SEAL.] (Signed) T. F. CARLISLE,
H. B. M. Consul General.

New Orleans, December 17th, 1917.

24 *Certificate of James A. Smith, Consul-General for the United States at Calcutta, India.*

Filed —— —, ——.

Certificate.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradiction from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.] (Signed) JAS. A. SMITH,
Consul General of the United States of America at Calcutta, India.

Calcutta, April 8th, 1918.

25 *Certificate of A. H. Grant, Secretary to the Government of India in the Foreign and Political Department.*

Filed Oct. 30, 1918.

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "Chunilal H. Setalvad" on the warrant of arrest, and on the information and depositions on which the warrant was granted, are the signatures of Chunilal Harilal Setalvad, a Magis-

trate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate, having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,
Secretary of the Government of India in the Foreign and Political Department.

Simla, the 2nd April, 1918.

26 Case No. 533/W. of 1917.

No. 5958 of 1917.

To Arthur Fuller, Inspector, Bombay City Police Force, Bombay:

Whereas one Lieutenant Colonel Charles G. Collins stands charged with the offence of cheating at Bombay under Section 420 Indian Penal Code in respect of a pearl necklace valued at Rs. 75,000 the property of the firm of Pohoomull Brothers Jewellers of Bombay.

You are hereby directed to arrest the said Lieutenant Colonel Charles G. Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 11th day of October 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

27 In the Court of the Chief Presidency Magistrate, Bombay.

In re UDHARAM PATARBAGH, Manager of the Firm of Pohoomull Brothers, Jewellers, of Bombay, Complainant,

vs.

Lt. Colonel CHARLES G. COLLINS, Accused.

Charge: Cheating, Section 420, I. P. Code.

I the undersigned being the Ag. Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the foregoing pages of paper is a true copy of the information of Udharam Patarbagh Manager of the firm of Pohoomull Brothers, Bombay, taken on solemn affirmation before me on the 22nd day of September, 1917, and of the depositions of the said Udharam Partabrai (or Patarbagh), Lokumull Sahijram, John Dunston Sherston Baker, in support thereof sworn and taken before me on the 11th day of October 1917 and of the further application made by Udharam Partabrai and of my order thereon and of the deposition of Arthur Fuller in support thereof sworn and taken before me on the 19th

day of October 1917 and of the Lists of Exhibits and of exhibits thereto marked A, B, C, D, E, F, G and H and of my certificate.

Given under my hand and the seal of the Court this 19th day of October, 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

28 In the Esplanade Police Court of Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The information of Udharam Patarbagh of Bombay Hindoo Inhabitant the Manager of Pohoomull Brothers a firm carrying on business at Apollo Bunde Bombay and elsewhere solemnly affirmthis — day of September 1917 before the Presidency Magistrate Bombay, Shew-th:

1. That your complainant is the manager in Bombay of Pohoomull Brothers a firm of jewellers, silk merchants and curio dealers who carry on business inter alia at Apollo Bunder Bombay.

2. The accused described himself as Lieut. Col. Charles G. Collins of the Howe Battalion, Royal Naval Division and it has been ascertained that he is now resident at Chateau Frontenac Quebec and it is believed he is attached to the Ottawa Militia.

3. On or about the 20th December 1916 the accused in company with one Mrs. Olsan, and a Mrs. Elsie Muntz believed to be a divorcee and the fiancee of the accused were staying at the Ta Mahal Hotel Bombay and they visited your complainant's shop and made some small purchases for which they paid cash.

4. On the 23rd December 1916 the accused purchased a silk rug from your complainant for Rs. 650 and paid for it by a cheque on Thomas Cook & Son, Bombay.

5. About this time the accused and Mrs. Olsan and Mrs. Muntz left the Taj Mahal Hotel and went to reside in a bungalow
29 in Harknes Road Malbar Hill.

6. A few days later the accused and Mrs. Muntz called at your complainant's shop and asked to see some pearl necklaces of the value of about Rs. 75,000. An appointment was made at the accuse- residence to which your complainant was to take some necklaces and this was done and Mrs. Muntz selected a pearl necklace of the value of Rs. 72,250 but it was not then purchased.

7. On the 30th January 1917 the accused bought a pearl ring for Rs. 1000 for which he paid. On that day the accused and Mrs. Muntz said they wanted thirteen pearls in the necklace altered. It was not possible to alter the required number of pearls but seven were altered bringing up the value of the necklace to Rs. 75,250.

8. On the 2nd February 1917 the accused asked your complainant to call at his bungalow and Mr. Lokoomull Sahigram a member of

the firm of Pohoomull Brothers and Tojoomul Dingomull a manager of the firm attended at the bungalow.

9. The accused then purchased the necklace for Rs. 75,000 and promised to pay for the same. The accused gave your complainant's firm a draft for £5000 on Messrs. E. Curtice and Company 8 Clarges Street London in payment. Your complainant says that the accused well knew that the said draft would not be paid.

10. Your complainant's firm were not then satisfied with the said draft and did not give delivery of the necklace and on the 3rd February 1917 the accused in company with the said Tejoomull Dingomull had an interview with Mr. Brent the Manager of the International Bank, Bombay. Mr. Brent suggested that the accused should wire to Messrs. E. Curtice & Company to pay £5000 to the International Bank's office in London and Mrs. Brent wired to that office to receive the money.

11. The accused subsequently informed your complainant's firm that he had cabled accordingly to Messrs. E. Curtice & Company and that the amount of the draft would be duly paid to the International Bank by Messrs. E. Curtice and Company on receipt of the said telegram.

12. On the 7th February 1917 the said Mrs. Muntz on behalf of the accused called at your complainant's shop and took delivery of the said necklace.

13. Your complainant's firm had certain urgent payments to make of a considerable amount and therefore on the 10th February 1917 they asked the accused whether he would pay them Rs. 15,000 on account of the said draft, of which the proceeds had not then been received by them. The accused gave them a cheque for Rs. 15,000 on Thomas Cook and Son and it was arranged that your complainant's firm should repay that amount to the accused when the proceeds of the draft had been received in Bombay. The said cheque for Rs. 15,000 was duly honoured.

14. On the 22nd February 1917 your complainant's firm received a letter from the International Bank stating that their London Office had received no moneys from Messrs. E. Curtice and Company.

15. On the 23rd February 1917 the accused was interviewed and stated that he had instructed his London Agents to sell some shares but that they had advised against his doing so and had suggested a loan instead.

16. On the 25th February 1917 the accused was again interviewed by Sahijram Khiamul Lokoomull Sahijram and Tejoomull Dingamull and he stated he could sell his shares but that it would take a month to do so and he proposed therefore to give them a draft for £4000 on the firm of William Collins Sons and Company of which he stated he was a partner. The accused represented that his brother was another partner and would not refuse a draft from him.

17. On this representation your complainant's firm returned to the accused the draft on Messrs. E. Curtice and Company and accepted a draft drawn by the accused on William Collins Sons and Company of London and Glasgow. Your complainant's firm agreed not to present the draft until the 15th April 1917.

18. On the 27th February 1917 the accused with Mrs. Olsan and Mrs. Muntz left India for Colombo and thence travelled Eastward to America.

31 19. On the 21st April 1917 your complainant was advised that the draft for £4000 had been refused with the answer "No authority to draw." The said draft has been presented twice but has not been paid. Your complainant says that the accused well knew that it would not be paid.

20. Your complainant submits that the accused deceived your complainant and thereby dishonestly induced your complainant's firm to deliver the said necklace to Mrs. Muntz on his behalf upon a promise to pay for the same, which promise the accused had no intention of performing, that the accused gave your complainant a worthless draft for £5000 on Messrs. E. Curtice and Company well knowing the same to be worthless and that the accused gave the draft for £4000 on William Collins Sons and Company well knowing that the same was worthless.

Your Complainant therefore submits that the accused has committed the offence of cheating under S. 420 of the Indian Penal Code and prays that he may be charged and dealt with according to law.

(Sd.) UDHARAM PARTABRAI.

Mr. BAKER,
For Complainant.

Taken on solemn affirmation before me—

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

22-9-17.

32 In order that complainant may produce witnesses to enable me to act under the Fugitive Offenders' Act adjourned to 25-9-17.

(Sd.) CHUNILAL H. SETALVED,
Ag. Chief Presidency Magistrate.

Further adjou-ned for orders to 11-10-17.
(Initialled) C. H. S.

25-9-17.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVED,
Ag. Chief Presidency Magistrate, Bombay.

33 547-2,000,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. I for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Udharam
Religion Hindoo
Age about 21
Residence Carnac Bridge

Father's name Partabrai
Caste Katri
Occupation Manager of Pohoomull Brothers
District——

Examination-in-chief:

The accused Lieutenant Colonel Collins has absconded out of British India and according to my information he is at present in Quebec Canada. I am Manager of Pohoomull Brothers doing business in Bombay and other places as jewellers and in silk and curios. I am the Manager of the Apollo Bunder shop. I know the accused Lieutenant Colonel Charles G. Collins. I first saw him on or about 20th December 1916 when he visited our shop at Apollo Bunder. The accused talked a good deal about himself. He said that he was attached to the Howe Battalion and that he was a Royal Naval Officer. He said he was on six months' leave. There was one Mrs. Olsen with him and Mrs. L. C. Muntz. The accused told me that Mrs. Muntz was his fiancee. The accused told me that they were all staying at the Taj Mahal Hotel which is a first class Hotel in Bombay. Accused made some purchases worth about 200 or 300 Rs. and paid for them. On or about 23rd December 1916 the accused accompanied by Mrs. Muntz came to me at our Apollo
34 Bunder shop and bought one silk rug for Rs. 650 and the *and the* accused gave a cheque on Messrs. Thomas Cook and Sons and the cheque was cashed. About this time the accused and the two ladies changed their residence from Taj Mahal Hotel to Harkness Road, Malabar Hill a locality where rich persons reside. A few days afterwards the accused and Mrs. Muntz called at our Apollo Bunder shop and they said that they wanted to see some pearl necklaces of the value of about Rs. 75000 each. I did not show any necklace that day but I made an appointment to take the necklaces to their residence. A few days afterward Mr. Tajamull our general Manager and Mr. Lokhumull one of the proprietors went to the accused's bungalow with two or three necklaces. Then they returned and gave me back the necklaces. On 30th January last the accused Colonel Collins and Mr-. Muntz came in our shop and bought a pearl ring for 1000 Rs. and the accused gave a cheque which was cashed. On this occasion Mrs. Muntz said in the presence of the accused that the particular necklace which they saw at their residence may be shown to them again and I showed it. The value of that necklace was 72250 Rs. Mrs. Muntz said that she wanted

13 pearls to be altered from that necklace and that she would not mind if it cost a few hundred pounds more. We got 6 or 7 pearls altered and the value of the necklace became 75000 Rs. The necklace was ready on 2nd February 1917. I or Mr. Tejumull telephoned to the accused saying that the pearl necklace was ready and he replied saying that he would call at the shop at 1 P. M. Subsequently that day I got a message from him that the pearl necklace should be taken over to his place at Malabar Hill. Mr. Lokomull Lokhumull and Mr. Tejoomull took the necklace to the residence of the accused. I did not go. Lokhumull and Tejumull returned with the necklace and they brought a draft for 5000£. drawn by the accused on Messrs. E. Curtice of 8 Clarges Street, London W. I produce the draft original as well as duplicate put in and marked Ex. A. One of the senior partner- Mr. Sahijram one of the proprietors of our firm was not satisfied with the draft so he went to the manager of the International Banking Co. with the draft. On his
35 return and under his advice I telephoned to the accused asking him to see us the next day. The following day the accused came to our shop and he went with Tejumull to see the Manager of the International Bank. From that Bank Tejumull telephoned to me to take the draft Ex. A to that Bank and I did so. I went inside to the Manager of the Bank where Tejumull and the accused were also seated. The Manager Mr. Bent suggested that the accused should wire to his agents E. Curtice & Co. to pay 5000£ to the Manager of the International Bank in London. The accused said that that course would be very satisfactory to him and that he was going to wire to his agent to that effect. The accused also assured us that the amount will be paid immediately by E. Curtice & Co. to the Manager International Bank London on the receipt of his telegram. Sometime afterwards accused said he had sent the telegram. After two or three days the accused accompanied by Mrs. Olsan and Mrs. Muntz came to our shop in the evening. Mrs. Olsan said that she also wanted to buy a pearl necklace worth about Rs. 75000 and we showed them one necklace worth about 6000 Rs. They did not buy it. On or about 7th February 1917 the accused came to our shop with Mrs. Muntz and asked for the delivery of the first necklace. Lokumull, Trjumull and myself consulted whether the necklace should be given as no money was paid. Accused assured us that he had sent a telegram as arranged and that the amount will be paid by E. Curtice & Co. to the Manager International Bank, London. Trusting to these assurances we gave the accused the necklace. Then on or abut 10th February we had some drafts to meet. Lokumull and Tejumull went to the accused's house and Lokumull gave me a cheque for 15000 Rs. drawn by the accused on Messrs. Thomas Cook & Sons. Lokumull told me that we would have to return 15000 Rs. to accused on the Manager of the International Bank receiving 5000£ on our behalf. That cheque for Rs. 15000 was cashed some
36 days late. On 22nd February we got a letter from the International Banking Corporation saying that nothing was received from E. Curtice & Co. I produce that letter put in and marked Ex. B. Upon that Lockumull and Tejumull went to the

accused's bungalow and they saw and gave me certain information. On 26th February last they gave me a draft for 4000£ drawn by the accused on Messrs. William Collin and Sons Glasgow. On 27th February the accused and the two ladies left Bombay by P. & O. Co.'s steamer for Colombo. Accused told me that they would go from here to Colombo then to Shanghai and then to London. The accused told me that the draft for 4000£. should be presented on 15th April and we sent the draft for collection to the International Bank Bombay. On 20th April we received a letter from the International Banking Corporation stating that the draft in question was refused payment with the answer "no authority to draw." I produce that letter put in and marked Ex. C. We then telegraphed to our agent at Yokohoma for arranging with the accused for payment. We received this telegram dated 21st April from the accused from Yokohoma saying to represent the draft 60 days' sight delay unavoidable. The telegram put in and marked Ex. D. Then we caused inquiries to be made and found that the accused was touching Vancouver so we sent a telegram to him there but no reply was received. The International Banking Corporation thrice presented the draft for payment but it was not honoured. On 27th June we received this letter from the Bank put in and marked Ex. E saying that "Collins noted nonpayment." Then we instructed our Solicitors Messrs. Little & Co. to communicate with their London correspondents and I produce the reply which my Solicitors got from Rawle Johnstone & Co. Solicitors put in and marked Ex. F. We have also received information from reliable sources to the effect that Messrs. E. Curtice & Co. are not Bankers but only boarding house keepers and the accused is an undischarged bankrupt. I have no reason to disbelieve this information. The draft of 4000£ in question is in London with the International Banking Corporation at present. I say the accused has cheated us.

37 If he had not given us the assurances I have spoken of we would not have given the necklace to him. The accused is tall, clean shaven about 40 years of age. He is fair. I will be able to identify him and will be able to identify the necklace in question. I will also be able to identify most of the pearls even if the necklace is broken up. It was a single row necklace. The transaction is put down in our book.

(Sd.) UDHARAM PARTABRAI.

Taken on solemn affirmation this 11th day of October 1917, Before me—

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True Copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

38 547-2,000,000-6-14—(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. II for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Lokumull.	Father's name Sahijram.
Religion Hindoo.	Caste Khatri.
Age about 27.	Occupation Merchant.
Residence Carnac Bunder.	District ——.

Examination-in-chief:

I am one of the partners of Messrs. Pohoomull Brothers doing business in jewellery, silk and curios at Bombay and various other places. One of our shops is at Apollo Bunder Fort in Bombay. The accused Lieutenant Colonel Collins absconded from British India. According to our information he is at Quebec Canada. I first met him about the middle of January last. I accompanied by Tejumull our general Manager and my father Sehejram went to the accused at his bungalow at Malabar Hill with some pearl necklaces. There the accused and one Mrs. Muntz examined the necklaces and selected one necklace worth about 72258 Rs. But they did not buy it at the time though they said that they liked it the best. On 30th January last Mrs. Muntz and the accused came to our Apollo Bunder shop and they purchased one pearl ring worth 1000 Rs. and paid for it by a cheque which was cashed. They looked at the same necklace. Mrs. Muntz said that she wanted to have 13 pear-s changed from that necklace. Accused told me that Mrs. Muntz was his fiancee. We altered 7 pearls and it was not possible to alter the 13 pearls and the price increased by 3000 Rs. The necklace
39 was ready on 2nd February. I and Tejumull took that necklace and went to the accused's bungalow at Malabar Hill and there we saw the accused and Mrs. Muntz. Mrs. Muntz said in the presence of the accused that she was going to marry him, (the accused) and the necklace was going to be a Wedding Present to her from him. The accused examined the necklace and said he purchased it. The accused drew the original and duplicate drafts Ex. A on E. Curtice & Co. but we were not satisfied with the draft and we wanted to consult with my father so we brought back the drafts and the necklace. The last witness Udharam knew all this. My father was not satisfied with the drafts so we went and consulted our Bank i. e. the Manager of the International Banking Co. Ltd., and he advised use to get the money by telegram and we agreed. The next day Tejumull telephoned to the accused to come and see our Bank Manager. That day the accused showed me a telegram which he was sending to St. Lowis saying cable 2500 dollars more available if needed. Accused told Tejumull in my presence to send telegram to the telegraph office and it was done. Reading that telegram accused impressed us with the fact that accused was a rich

man and we can safely trust him. I was not present at the interview with the Manager of the International Banking Corporation. On 5th February last accused came to our shop with Mrs. Muntz and Mrs. Olsan and Mrs. Olsan said she wanted to purchase a necklace worth about 5000£ and we showed her necklace worth about 60000 Rs. but she did not purchase it. On 7th February accused accompanied by Mrs. Muntz came to our shop and they wanted that necklace worth 75000 Rs. which they had selected. Accused assured us that 5000£ will be paid by Messrs. E. Curtice & Co. on his telegram to our Bankers viz. the International Banking Co. in London so we consulted among us and believed the accused and we gave the accused the necklace worth 75000 Rs. On 22nd February we received information from our Banker that the money
40 was not paid by E. Curtice & Co. Ex. B is the letter we received from our Bankers. On 23rd February last I and Tejumull went to the accused at his bungalow and we told him what our Banker had written. Then the accused told us that he had wired his agents E. Curtice & Co. to sell some of his shares and that he had received a reply saying that the shares do not fetch the proper value and so it was advisable to get a loan. Accused also said that he had wired to his agents to give the terms on which he can get a loan but that no reply had been received. On 25th February last myself and Tejumull went to the accused's bungalow and he said he was one of the partners in William Collins Sons & Co. Glasgow London and that he owns oil fields in Mexico. Accused said that Mrs. Muntz was a lady of means. Accused also said that he had some shares in Mexico mines and he said it would be a heavy loss to him if he sold his shares. Accused said that if he gave a cheque for 4000£ on the firm of William Collins Sons & Co. at Glasgow on which he was a partner the firm will not refuse it. Accused said that he was going to get 90000£ as profit on the sale of his mines but he wanted a 120000£ as profit. On 26th February accused gave me a draft for 4000£ on William Collins Sons & Co. It was a sight draft but he told us not to present the draft till 15th April and we agreed. We gave the drafts for collection to the International Banking Corporation and it has been dishonoured. Ex. C is the letter from our Bankers. The accused is rather tall, thin in face, clean shaven, about 40 years of age. Our Solicitor i. e. Mr. Baker of Messrs. Little & Co. held a consultation with Mr. Strangman
41 the Advocate General and I produced the certificate that he has given. This certificate put in and marked Ex. G.

Taken on solemn affirmation this 11th day of October 1917.

(Sd.) CHUNILAL H. SETALVAD,

Before me—

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

42 547-2,00-,000-6-14(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. III for the Prosecution.

I do hereby on solemn affirmation state that—

My name is John Dunstan.	Sherstan Baker.
Religion Christian.	Caste.
Age about 35.	Occupation Solicitor.
Residence Wallace Street.	District Bombay.

Examination-in-chief:

I am a partner of Messrs. Little and Company Solicitors. We are acting for the complainant. I have gone into the case. I have also caused inquiries to be made about the accused. We received this reply from our correspondent Rawle Johnson and Co. It is Ex. F. I am of opinion that on the depositions and the materials there is a prima facie case of cheating punishable with more than one year rigorous imprisonment, it is punishable with seven years' rigorous imprisonment under section 420 of the Indian Penal Code which is in force in British India. I have got the certificate Ex. G. from the Advocate General who has advised this prosecution.

(Sd.) J. D. SHERSTON BAKER.

Taken on oath this 11th day of October, 1917, before me

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

43 In the Esplanade Police Court of Bombay.

Before the Chief Presidency Magistrate.

Case No. 533/W. of 1917.

UDHARAM PATARBAGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The application of Udharam Patabargh the above-named complainant, sheweth,

1. That on the 22nd day of September 1917 your complainant filed an information against the above-named accused in this

Honorable Court charging the accused with cheating in respect of a sum of Rs. 60000 part of the purchase price of a pearl necklace.

2. That at the date of the filing of the information the accused was believed to be at Quebec in Canada.

3. That the learned Magistrate accordingly directed that the procedure laid down by the Fugutive Offenders Act should be complied with and after the same had been complied with the learned Magistrate on the 11th day of October 1917 directed the issue of a warrant of arrest against the accused.

4. That your complainant has, since the issue of the said warrant, been informed by the Under Secretary to Government Political Department that the accused on or about the 1st October 1917 left the said City of Quebec and proceeded to New York in the United States of America and that he is now resident at the Ritz Carlton Hotel in that City.

Your complainant therefore prays that further evidence necessary to be recorded where an accused is not within His Majesty the King Emperor's dominions may be recorded and that a fresh warrant may be issued and that such fresh warrant should comply with the provisions of the Extradition Acts and the Extradition treaty with the United States of America.

Dated this 19th day of October 1917.

(Sd.) UDHARAM PARTABRAI.

Application drawn by
LITTLE & CO.
Complainant's Attorneys.

In pursuance of this application Inspector Fuller is examined today. A warrant for the arrest of the accused on the materials already before me is issued as prayed for.

(Sd.) CHUNILAL H. SATALVAD.

19-10-17.

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

45 547-2,00,-000-6-14—(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. IV for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Arthur
Religion Christian
Age about 41
Residence Phalton Road

Father's name Fuller
Caste
Occupation Inspector of Police, Bombay.
District ——

Examination-in-chief:

I am an Inspector in the Bombay Police. I am deputed by the Government of Bombay through the Commissioner of Police to act as an escort of the accused Collins if surrendered. I was handed a warrant by this Court under the Fugitive Offenders Act, Telegrams were sent by His Excellency the Governor of Bombay for the arrest of the accused Collins to the authorities at Quebec where he was said to have absconded but subsequently information has been received that the accused Collins has gone to New York in the United States. I produce the letter from the Under Secretary to Government Political Department addressed to the Commissioner of Police mentioning these facts. This letter put in and marked Ex. H. I have also gather- information about the appearance and marks for the identification of the accused Collins. He is tall, *we* built about
6 feet high athletic florid complexion, walks with Military
46 gait squaring shoulders. He was clean shaven when in Bombay. Hair scanty dresses well but flash, weighs between 13 and 14 stones.

(Sd.) A. FULLER,
Inspector.

Taken on oath this 19th day of October, 1917, before me

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

47 *List of Exhibits in Case No. 533/W. of* 1917.

Exhibit A. Original and Duplicate drafts for £5000 dated 2nd February 1917 from Lt. Col. Charles G. Collins to Messrs. E. Curtice & Co., 8 Clarges Street, London, W. England.

Exhibit B. Letter from the International Banking Corporation Bombay dated 22nd February 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit C. Letter from the International Banking Corporation dated 20th April 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit D. Telegram from accused Colonel Collin to Pohoomall, Bombay.

Exhibit E. Letter from the International Banking Corporation dated 27th June 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit F. Letter from Rawle Johnstone & Co. dated 14th August 1917 to Messrs. Little & Co.

Exhibit G. Certificate from Advocate General.

Exhibit H. Letter No. 8012 dated 17th October 1917 from the Under Secretary to Government, Political Department, Bombay, to the Commissioner of Police, Bombay.

(Sd.) BALARAM GAJANAN,
Judicial Clerk,
Chief Presidency Magistrate's Court, Bombay.

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

48 **Ex. A.**

No. B. 42876.

Duplicate.

£5000-0-0. Bombay, February 2nd, 1917.

Sixty days after date (original unpaid) pay to Pohoomull Bros. or Order the sum of five thousand pounds sterling and charge the same to my account.

(Sd.) CHARLES G. COLLINS,
Lieut. Colonel.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

Ex. A.

No. B. 42876.

Original.

£5000-0-0. Bombay, February 2nd, 1917.

Sixty days after date pay to Pohoomull Brothers or Order the sum of five thousand pounds sterling and charge the same to my account.

(Sd.) CHARLES G. COLLINS,
Lieut. Colonel.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

49 Ex. B.

International Banking Corporation.

Bombay, 22nd February, 1917.

Messrs. Pohoomull Brothers, Bombay.

DEAR SIRS: In response to our telegram of the 19th Instant to our London office enquiring if they had received any sum from Messrs. E. Curtice & Co. we have today received a telegram stating that nothing has been received.

Please note that we have debited your account with Rs. 20 cost of telegram. Kindly confirm our entry.

Yours faithfully,

(Sd.) —— ——, *Manager.*

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

50 Ex. C.

International Banking Corporation.

Bombay, 20th April, 1918.

Messrs. Pohoomull Bros., Bombay:

Yours. C. on Wm. Collins Sons & Co. Ltd. Glasgow p. £4000/–
Our No. 17/215.

We have received telegraphic advice from our London Office that the above bill is refused payment with the answer "no authority to draw."

Kindly give us your further instructions and hand us Rs. 161-4- being our ¼% commission and cost of telegram as under:

¼% commission on £4000/-=£10/- @ ¼ ..... Rs. 150-0-0
C/o telegram from London re: do ..... " 11-4-0

Rs. 161-4-0

Any further charges yet to be paid will be advised to you on receipt of advice from London.

Yours faithfully,
[SEAL.] (Sd.) —— ——, *Manager.*

True copy.
(Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

51 Ex. D.

C3 Posts Telegraphs.

Bombay 2nd April 1917.

G. T. O.

=DF LF 278 Yokohama 24 MS PHK 11.

L C D Pohoomull Bombay.

Represent draft sixty days delay unavoidable.

COLONEL COLLIN.

True Copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

52 Ex. E.

International Banking Corporation.

Bombay, 27th June, 1917.

Messrs. Pohoomull Bros., Bombay.

DEAR SIRS: We have received the following telegram from our London Office today:

"Referring to your telegram of 21st collection No. 215 Collins noted non-payment."

For cost of this message your account is debited Rs. 7/8/—(Rupees seven and annas eight only) which please note and confirm.

Yours faithfully,
(Sd.) —— ——, *Manager.*

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

53 Ex. F.

1 Befford Row, London, W. C. 1,

August 14th, 1917.

Re Collins.

DEAR SIRS: With reference to your letter of the 12th July we have communicated with our Glasgow correspondents who are important people and who will be able to give us more information about the subject of your enquiry than anyone else.

The following is an extract from a letter we have received from our Glasgow correspondents, whom we asked to make enquiries.

"We are in receipt of your letter of the 10th Curt.

"We happen to know a good deal about Charles G. Collins. We "are the Solicitors of his elder brother, Mr. W. A. Collins, and are "on intimate terms with another brother, Mr. Godfrey P. Collins "M. P. for Greenock.

"About Charles we have only the worst report to give. As a young "man he had to resign his Commission in the Army. He was for "many years in America and was a few years ago involved there in "a criminal prosecution in regard to money matters.

"He got a chance in the present war and did well, we might say "brilliantly to begin with, but had to leave the Army (we do not "know the particulars), when holding the rank of Lieutenant "Colonel.

"He married an American, who had means of her own in strong "opposition to her father but they separated some time ago.

54 "We have heard that he was associated with a married "woman presumably Mrs. Montz, but as his wife is not, we "understand, to proceed with a divorce, Mrs. Montz's relation with "him must be somewhat unusual.

"We know nothing as to any interest he may have in oil fields in "Mexico, but we do not believe his statement as to this to be true.

"We do know, however, that he has no interest in Messrs. William "Collins & Sons & Co. Ltd., and that neither of his brothers will do "anything for him.

"We are sorry that our report should be so unsatisfactory, but leave "it to you to decide as to how much of it you should communicate "with your Bombay correspondents."

We are communicating with the War office as to the present whereabouts of Colonel Collins but we are afraid that we shall get nothing but the usual answer in these cases, which almost invariably —that the address will not be given, but that any letter we like to send to Colonel Collins C/o the War Office, will be forwarded.

Yours truly,

(Sd.) RAWLE JOHNSTONE & CO.

Messrs. Little & Co.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

55 Ex. G.

In the Esplanade Police Court of Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lt. Col. C. G. COLLINS, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.

2. That the offence of cheating and dishonestly inducing delivery of property is punishable under Section 420 of the Indian Penal Code with either simple or rigorous imprisonment (the latter being imprisonment with hard labour) which may extend to seven years.

Dated this 25th day of September 1917.

(Sd.) T. J. STRANGMAN,
Advocate General of Bombay.

True copy.
[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

56 Ex. H.

No. 8012.

Political Department,
Bombay Castle, 17th October, 1917.

From A. F. Kindersley, Esquire, Under Secretary to Government, Bombay.

To the Commissioner of Police, Bombay.

SIR: I am directed, with reference to the correspondence ending with your letter No. 10231/31, dated the 8th October 1917, to state that a reply has been received by His Excellency the Governor from the Lieutenant Governor of Quebec, dated the 13th October, as follows:

"Your telegrams of 6th and 11th August (sic). Reply that same person left with New York October 1st stay at Hotel Ritz Carlton, and is not in jurisdiction of Province of Quebec."

2. I am accordingly to say that, unless you see any reason to the contrary, you should apply to the Chief Presidency Magistrate for a warrant of arrest against Collins, stating the offence in terms of the treaty between the United States and Great Britain that is, as an

offence of "obtaining property by false pretences." The necessity for this will be seen on a reference to pages 66 and 201 (3rd treaty with United States) of the Honourable Mr. Muddimen's "Law of Extradition from and to British India." I am also to invite attention to Article X on page- 198-9 of the same.

57 3. The warrant should be addressed to the officer who is to be sent to act as escort to Collins. It should be submitted to Government with record of the evidence, or copies thereof certified by the recording Magistrate. In the case of depositions or other documents extending to more than one sheet of paper, any suspicion of the possibility of the substitution of a sheet should be forestalled by appropriate arrangements.

4. I am also to request that the description of the offender already asked for may be submitted to Government with the papers.

I have the honour to be, Sir,

Your most obedient servant,

(Sd.) A. F. KINDERSLEY,
Under Secretary to Government.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

58 Chief Presidency Magistrate's Court.

I, Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay, do hereby certify that a prima facie case of an offence at Bombay of cheating under Section 420 of the Indian Penal Code in respect of or obtaining by false pretences a pearl necklace valued at Rs. 75000 has been established against the accused Lt. Colonel Charles G. Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the seal of the Court this 19th day of October 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

59 *Motion of Charles Glen Collins to Dismiss.*

Filed Oct. 26, 1918.

No. 15927.

U. S. District Court, Eastern District of Louisiana, New Orleans.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and

to discharge him from custody without day because this Court is without jurisdiction to try appearer or to hear and pass upon the question raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on or about the 5th day of November 1917 affidavit was made by C. Clive Bayley His Britan-ic Majesty's Consul General at the Port of New York against appearer herein Charles G. Collins before Hon. Samuel M. Hitchcock, United States Commissioner for the Southern District of New York for the alleged offense, matters and things referred to and declared upon in the affidavit of Gerard M. Lolly, British Vice Consul at the City of New Orleans which is basis of these proceedings which said affidavit by the said C. Clive Bayley, His Britan-ic Majesty's Consul General was for the purpose of having this appearer extradited from this country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Lolly, British Vice Consul at the City of New Orleans; that upon the said affidavit of C. Clive Bayley, His Britan-ic Majesty's Consul General at New York, a warrant of arrest was issued by the said Samuel M. Hitchcock, United States Commissioner for the Southern District of New York and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal for the Eastern District of Louisiana acting under the authority of the said
60 warrant issued by the said Samuel M. Hitchcock, United States Commissioner for the Southern District of New York and this appearer was duly incarcerated in the Parish Prison located in the City of New Orleans and also in the House of Detention likewise in the City of New Orleans; that in due time the said affidavit by the said C. Clive Bayley, his Britan-ic Majesty's Consul General at the Port of New York hereinabove referred to was dismissed and appearer was discharged from custody thereunder and the said affidavit and the warrant issued upon the faith thereof were fully and duly satisfied and this appearer cannot now or again be held to answer the said charges nor for the offenses, matters or things alleged in said affidavits.

2nd. Because the affidavit of Gerard M. Lolly British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons

(a) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(b) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law and by the said treaties particularly because the said Loly, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

61 Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this appearer without day.

(Signed) CHARLES GLEN COLLINS.

(Signed) J. ZACH SPEARING, *Atty.*

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct.

(Signed) CHARLES GLEN COLLINS.

Sworn to and subscribed before me this 22nd day of October 1918 at the City of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. ZACH SPEARING,
Not. Pub.

62 *Affidavits of Complainant, Exhibits, Certificates, and Deposition- of Witnesses.*

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed and said that he is British Vice Consul at the City of New Orleans; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretenses, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow and London; that he was a Colonel in the Howe *Batallion* of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had the right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled to an additional credit of two thousand pounds. Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in

the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Batallion of the Royal Naval Division, and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds, or for any amount, on said Messrs. E. Curtice & Company; that the said E. Curtice & Company were not bankers; that the said Col-
63 lins was not entitled to an additional credit of Two thousand pounds, or to any credit whatsoever; that by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons, one emerald and diamond necklace; five emeralds; one star ruby and three sapphires, of the price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi Lall & Sons; which said pretenses were to the knowledge of said Collins, at the time of making same, false and fraudulent; and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon instructions received from the said Thomas F. Carlisle.

(Signed) GERARD M. LOLY.

Sworn to and subscribed before me this 16 day of October, 1918.

(Signed) RUFUS E. FOSTER, *Judge.*

64 UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a Colonel in the Howe Batallion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had a right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled

to an additional credit of two thousand pounds; whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Batallion of the Royal Naval Division and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand
65 pounds or for any amount on said Messrs. E. Curtice & Company, and said Collins then and there well knew said draft would not be paid; that the said E. Curtice & Company were not bankers; that the said Collins was not entitled to an additional credit for Two thousand pounds, or to any credit whatsoever; that by means of said false, fraudulent and felonious pretences, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons one emerald and diamond necklace; five emeralds; one star ruby and three sapphires, of the price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi Lall & Sons; which said pretences were to the knowledge of said Collins at the time of making same, false and fraudulent; and affiant further says that the said Collins, is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is based, is as follows:

The evidence taken on said charge in the Chief Presidency Magistrate's Court, at Bombay, India, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, and the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried Sheriff of the Sheriffdom of Lanarkshire, said pieces of evidence duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States are duly annexed to an affidavit filed this day
66 in Cause No. — of the docket of the United States District Court for the Eastern District of Louisiana at New Orleans; and a telegram from the British Consul General at New York to the British Consul General at New Orleans, of date January 4th, 1918, a code translation whereof is hereto annexed as part hereof.

(Signed) T. F. CARLISLE.

Sworn to and subscribed before me this 22 day of October, 1918.
(Signed) RUFUS E. FOSTER, *Judge.*

67 British Consulate General, New Orleans.

Translation of Telegram in Code from the British Consul General at New York to the British Consul General at New Orleans, Received on January 4th, 1918.

Following from Secretary to the Government of Bombay, Political Department, Begins. Your telegram of December 21st. Two other charges against Collins; during February last obtained under false pretences jewellry valued £2000 from firm of Geneshild and Sons of Calcutta and a pearl button valued £1700 from Mahomed Alli Zaimal Ali Raza of Bombay. Ends. Suggest that further affidavits be made and provisional warrants applied for at New Orleans in respect of these further charges.

BAYLEY.

I hereby certify that the above is a true and exact translation of the telegram received by me from the British Consul General at New York which is hereto annexed.

(Signed) T. F. CARLISLE,
H. B. M. Consul General.

New Orleans, January 7th, 1918.

68 *Certificate.*

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradition from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.] (Signed) JAS. A. SMITH,
Consul-General of the United States of America at Calcutta, India.

Calcutta, April 8th, 1918.

69 *Certificate.*

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and

on the information and depositions on which the warrant was granted, are the sig-atures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,
Secretary to the Government of India in the Foreign and Political Department

Simla, the 2nd April, 1918.

70 Case No. 662/W. of 1917.

No. 662/W. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences under section 420 of the Indian Penal Code within the jurisdiction of my Court in respect of jewellery valued at £2000 the property of the firm of Ganeshi Lall and Sons, jewellers of Calcutta.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 1st day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

71 In the Court of the Chief Presidency Magistrate, Bombay.

In re BRIJMOHAN LALA RAMKISHANDAS, of the firm of Ganeshi Lall & Sons, Complainant,

VS.

Lt. Col. CHARLES GLEN COLLINS, Accused.

Charge: Cheating, Sec. 420, I. P. Code.

I the undersigned being the Chief Presidency Magistrate, of Bombay hereby certify that the typed matter contained in the foregoing 29 pages of paper is a true copy of the Information of Brijmohanlal Lala Ramkishandas of the firm of Ganeshilall and Son, Bombay taken on solemn affirmation before me on the 1st day of December

1917 and of the depositions of the said Brijmohanlal Lala Ramkishandas, Dattatria Ramchandra and Arthur Fuller in support thereof sworn and taken before me on the 1st day of December 1917 and of the list of Exhibits and of Exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 and of my certificate.

Given under my hand and the Seal of the Court this First day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

72 In the Court of the Chief Presidency Magistrate, at Bombay.

The Information of Birjmohan Lala Ramkishandas of the firm of Ganeshi Lall & Sons Jewellers carrying on business at Agra, Simla and Calcutta against Lieut. Colonel Charles Glen Collins solemnly declared before A. H. S. Aston Chief Presidency Magistrate Bombay this — day of December 1917, sheweth:

1. Your complainant's firm carry on the business of the Jewellers and curio dealers at Agra Simla and Calcutta.

2. Lieutenant Colonel Charles Glen Collins (hereinafter called the accused) is, as your complainant is informed and verily believes, now under arrest in New York in the United States of America on an extradition warrant issued by this Hon-ble Court on a complaint of cheating and being No. 533W/— 1917 filed by Udharam Patarbugh of Pohoomull Brothers Jewellers of Apollo Bunder Bombay.

3. About the middle of February 1917 the accused with two ladies named Mrs. Olga Olsen and Mrs. Elsie Muntz were staying with Her Highness the Maharani Kapurthala and the accused purchased from your complainants firm the following jewells:

1 Fine square cut emerald weighing about 20 rutees.
1 Uncut emerald and diamond necklace.
1 Fine cabushon emerald weighing about 7 rutees.
1 Fine cut sap-hire about 16 rutees.
1 Cabushon emerald about 16 rutees.
1 Fine cut sapphire 11 rutees.
73 1 Fine cabushon emerald about 4 rutees.
1 Cabushon Sapphire about 31 Rutees.
1 Old engraved emerald about 80 rutees.
1 Fine cabushon star ruby about 20 rutees.

4. The price of the said jewells was £4500 equivalent to Rs. 67,500.

5. The purchase was completed on the 19th February 1917 when the accused gave your complainant a cheque for £500 on Messrs. Thomas Cook & Sons, Bombay and a promissory note for £2000 payable sixty days after date and expressed to be payable at Messrs. E. Curtice & Co., 8 Clarges Street London. The accused also promised to give to your complainants through their Agents Messrs. Thomas Cook & Son Bombay a sixty days' draft of his agents in London the said Messrs. E. Curtice & Co. for a further sum of £2000/—.

6. The accused represented that he was a wealthy man, a partner in the firm of William Collins Sons & Co. of Glasgow and London and

a Colonel in the Howe Battalion of the Royal Naval Division and then on six months' leave and he assured your complainant that the said cheque for £500, the said promissory note for £2000/— and the said draft for £2000/— would all be duly paid.

7. Your complainant's firm believed the assurance of the accused— and were induced thereby to deliver to him the above-mentioned jewells.

8. The said cheque for £500 was duly honored and the accused delivered to Messrs. Thomas Cook & Sons as your complainant's agents in Bombay the said draft for £2000.

9. Hereto annexed and marked "A" are copies of the said promissory note and draft and of a letter dated the 20th February 1917 written by the accused confirming the sale.

10. The accused left India on or about the 27th February 1917 and the said promissory note and draft were duly presented at maturity but were dishonored by non-payment. On being repre-
74 sented on several occasions they have been similarly dishonoured.

11. Your complainant has caused enquiries to be made in London and has been informed that the accused was adjudicated a bankrupt in England on the 19th August 1904 and that a second petition in bankruptcy was filed against him in 1916 and that he did not appear for his public examination.

12. Your complainant has also been informed that the accused has no interest at all in William Collins Sons & Co. Limited and that the same is not a firm but a limited Company.

13. Your complainant has been further informed that the accused was not on 6 months' leave from the Army as alleged by him but that since May 1916 he has not held a commission in the Army.

14. Your complainant has been further informed that Messrs. E. Curtice & Co. of 8 Clarges Street London are not Bankers and agents but merely boarding house keepers and were not aware that any draft had been drawn upon them by the accused nor had they any funds belonging to the accused wherewith to pay such drafts.

15. Your complainant submits that the accused deceived your Complainant and thereby dishonestly induced your complainant's firm to deliver the said jewells to him upon a promise to pay for the same which promise the accused had no intention of performing, that the accused gave a worthless promise note for £2000/—to your complainant well knowing the same to be worthless and that the accused gave a worthless draft for £2000/—to your complainant well knowing the same to be worthless.

Your complainant therefore submits that the accused has committed the offence of cheating under Section 420 of the Indian
75 Penal Code and prays that he may be charged and dealt with according to law.

(Sd.) BIRJMOHAN.

Solemnly declared before me.

(Sd.) A. H. S. ASTON,
Chief Presidency Magistrate.

Brijmohan Lal:—One of the drafts was given in Bombay. The sale took place at Delhi. The draft for £2000 sterling dated 22nd February was given in Bombay. Accused owed us £2000 and it was in fulfillment of the promise that he gave us the £2000. Accused told us that he had money at Messrs. Clarges and Company and that the money would be paid at once. He had all the goods at this time.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

76 "A."

Copy of Promissory Note Made at Delhi.

£2,000. Delhi, February 19th, 1917.

Sixty days after date I promise to pay to Messrs. Ganeshi Lall & Son or order the sum of Two Thousand Pounds sterling for value received.

(Sd.) CHARLES G. COLLINS,
Lt. Col.

Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Draft Drawn at Bombay.

No. B. 695,928.

£2,000. Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall & Son or order the sum of Two thousand pounds sterling and charge my account.

(Sd.) CHARLES G. COLLINS.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Letter Given by Coll. Collins at Delhi.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

DEAR SIRS: I have taken delivery of all the stones and Necklace which I have bought yesterday morning to the value of £2500/—and paid a cheque for £500/—and given you a sixty days' draft on my Agents in London for £2000/—

77 I have also received from you the large emerald I bought of you yesterday evening, weighing 19 Rutees about to the value of £2000/—for which I am going to give you a sixty days' draft on

my Agents in London, through your Agents Messrs. Thomas Cook & Son, Bombay, on Thursday the 22nd of this month.

Yours faithfully,
(Sd.) CHARLES G. COLLINS,
Lt. Coll.

A true copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

78 547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

No. 662/W. of 1917.

EXHIBIT No. —.

Deposition of Witness No. — for the—.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal	Farther's name Lalla Ramkisondas
Religion Hindoo	Caste Khatri
Age about 25	Occupation Jeweller
Residence Calcutta	District ——

Examination-in-chief:

I know the accused. I first met him in Agra in January 1917. With him was one Sir Edwin John of the John Mills of Agra and Commander Holmes, one Mrs. Trapman, one Mrs. Olsan who was represented as the Colonel's sister, one Mrs. Muntz who was represented as his wife. They came to my place. They first made a small purchase. They ultimately returned to Bombay. Accused gave me this card put in as Ex. No. 1. Accused asked me to come and see him at 8 Harkness Road. We showed him some things but we did not agree as to the price. Accused told me he was going to Baroda and Kapurthala and would come back to Delhi about 16th or 17th February 1917. On the 15th February I wrote a letter to accused. This is a copy Ex. No. 2. I received this reply Ex. No. 3. I went to the Cecil Hotel on Monday. My father was with me. I had a box of jewels with me. We saw accused on the 19th February in the Cecil Hotel Delhi. My father was there also accused, Mrs. Olsan, Mrs. Muntz and I. Accused selected some jewellery. This is a list of the ornaments he selected. It is correct Ex. 4. The price was agreed on as £2500. Accused gave me a cheque on Messrs.
79 Thos. Cook and Sons, Bombay for Rs. 7500 leaving a balance of £2000 to be paid by promissory note in the afternoon for we had no hundi papers then. Before I gave him credit accused told me he had some interest in the Canadian Railway and was a partner of Collins Sons and Company and had some shares in London too. Accused said he would wire to his Bankers from Bombay to pay the drafts on the due date. In the afternoon we went to ac-

cused's room with the stamped Hundi papers. Accused wrote them in duplicate. This is a copy of the Promissory Note Ex. 5. After he had finished he looked at the jewels again and decided to buy one large emerald of 19 rattis for £2000. He did not pay at the time because we had no Hundi papers. Accused said he would give a draft to our Agents Messrs. Thos. Cook and Sons in Bombay. He gave us this draft letter to be written to Thos. Cook and Sons Ex. 6. Before leaving Delhi on the morning of the 20th he gave this letter Ex. 7. He also gave us this card Ex. 8. He subsequently gave Messrs. Thos. Cook and Sons draft of which this is a copy Ex. 9. The original is in London. We received this advice by letter it is the original letter Ex. 10. Accused sent us this telegram Ex. 11. We received this advice from Thos. Cook and Sons Ex. 12. We caused enquiries to be made in London. I produce a letter received from Harry Morser with a report enclosed Ex. 13. No money has been received by me either in respect of the draft or Promissory note. Accused is a tall gentleman not very fat nor thin clean shaven, dark grey hair. He has a peculiar way of laughing. He has a very uncommon way of laughing. He does not walk like a soldier but like a millionaire. He looks like a very good man and a very rich man. He has left India.

80 If I had known that accused was an undischarged bankrupt and that Curtice and Company are boarding house keepers I would not have given accused the jewellery. I would not have accepted the draft in Bombay. Either I would have asked for cash or strong security and failing that I would have reported him to the Police. We know William Collins Sons and Company to be a good firm. I believed accused was a partner that is what he assured. I believed all his representations. I have lost £4000/-.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

81 547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Dattatraya	Father's name Ramchandra
Religion Hindoo	Caste Brahmin
Age about 31	Occupation Clerk in Thos. Cook and Sons
Residence Grant Road	District Bombay.

Examination-in-chief:

On the 23rd February 1917 we had draft from Col. Collins. It was dated the 22nd February 1917. This is a copy of the draft viz. Ex. 9. It was given to me on account of Ganeshi Lall. The draft

was dishonoured. It has not yet been paid. It is with our London Office,

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

82 547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Arthur	Father's name Fuller
Religion Christian	Caste European
Age about 41	Occupation Inspector of Police
Residence Phalton Road	District Bombay

Examination-in-chief:

I have ascertained the description of Col. Collins. He is about 6 feet high, has broad shoulders, florid complexion, walks with a Military gait, is cleanshave-, dresses in a flashy manner.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

83 *List of Exhibits in Case No. 662/W. of* 1917.

No. 1, Visiting Card.
No. 2. Letter to Col. dated 15-2-17 written by the complainant.
No. 3. Reply to above letter dated 16-2-17.
No. 4. List of Ornaments dated 19-2-17.
No. 5. Copy of the Promissory Note dated 19-2-17.
No. 6. Draft of letter written by the Colonel.
No. 7. Letter dated 20-2-17.
No. 8. London Address of the Col. (On a visiting card).
No. 9. Copy of a draft dated 22-2-17.
No. 10. First advice dated 3rd May 1917.
No. 11. Telegram.
No. 12. Advice dated 25th June 1917.
No. 13. Letter with report dated 28th September 1917.
No. 14. Certificate from the Advocate General of Bombay.

(Sd.) P. DAVID,
Judicial Clerk, Chief Presidency Magistrate's Court, Bombay.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

84 No. 1.

Ganeshi Lall & Son,

The Emporium, 13 Drummond Road,
Simla, Agra.

8 Harkness Road.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

85 No. 2.

Ganeshi Lall and Son, Jewellers,
The Emporium,
No. 13 Drummond Road, Agra & Simla.

Delhi, the 15th February, 1917.

To Lieut. Col. Collins, Kapurthala.

DEAR SIR: We trust this letter will find you at Kapurthala.

Since we had the pleasure of attending on you at Bombay we have had done some good luck both in selling and in acquiring a few good things.

It is due to one of these latter dues that I am sending this letter with a special messenger. It is an extremely fine ruby of uncommon size nearly fifteen carat in weight and full of life and colour. In short it is the right thing. We wish to show this to you and shall feel obliged by your letting us know when and where we can attend on you with it along with the other things you had selected in Bombay and which unfortunately I could not stay to sell as I had an engagement previously arranged at Agra.

Further I may add that the big emerald you saw in Bombay with me weighs nearly 20 rattis and not 15 rattis as were thinking.

Yours faithfully,

(Sd.) GANESHILA LALL.

P. S.—Kindly reply per bearer and oblige.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

86 No. 3.

Guests' House, Kapurthala.

Colonel Collins is much obliged for Mr. Ganeshi Lall's letter and will be glad to see him on Monday at the Cecil Hotel Delhi at Noon. Mrs. Collins wants a good diamond about 8-10 carats.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

87 No. 4.

Messrs. Ganeshi Lall & Son,

No. 13 Drummond Road, Agra, & the Mall, Simla.

No. L. 36.

Agra, the 19th February 1917.

Lt. Col. C. G. Collins, Dr.

To Ganeshi Lall and Sons, Manufacturing Jewellers, Embroiderers & Shawl Merchants, Agra and Simla.

Date.	Proceedings.	Amount.
February 19th.	One uncut emerald & diamond necklace	
	One engraved Emerald about 80 Rattis	
	One Cabushon emerald about 4¼ Rattis	
	One Cabushan emerald about 16 Rattis	
	One fine Cabushon Emerald about 17 Rattis	
	One Cabushan star Rubie about 20 Rattis	
	One large sapphire about 11 Rattis....	
	One fine small sapphire about 5¼ Rattis	
	One Sapphire	£2,500-0-0
	One large emeralds about 19 Rattis...	£2,000-0-0
		£4,500-0-0
	Received by cheque on Thos. Cook & Son, Bombay, for Rs. 7,500/-.....	£500-0-0
	Balance due	£4,000-0-0
	Total	£4,000-0-0

Rs. 4,000/-/-.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

88 No. 5.

Copy.

£2,000/-. Delhi, February 19th, 1917.

Sixty days after date, I promise to pay to Messrs. Ganeshi Lall and Son or order, the sum of two thousand pounds sterling for value received.

(Sd.) CHARLES G. COLLINS, *Lt. Col.*

Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

89 No. 6.

Lt. Col. C. G. Collins has told that he will call in on you next Thursday the 22nd instant and will sign a sixty day draft on his Agents in London payable to ourselves and we should be obliged if when you have collected this draft if you will credit the same to our account.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

90 No. 7.

Ganeshi Lall & Son,

The Emporium,

No. 13 Drummond Road, Agra & Simla.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

DEAR SIR-: I have taken delivery of all the stones and necklace which I have bought yesterday morning to the value of £2500 and paid a cheque for £500 and given you a sixty days' draft on my Agents in London for £2000.

I have also received from you the large emerald I bought of you yesterday evening weighing 19 Rattis about the value of £2000 for which I am going to give you a sixty days' sight draft on my Agents

in London, through your Agents Messrs. Thos. Cook and Son in Bombay on Thursday the 22nd of this month.

Yours faithfully,
(Sd.) CHARLES G. COLLINS, *Lt. Col.*

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

91 No. 8.

Lieut. Colonel C. G. Collins,

51 South Street, Park Lane, W.

Howe Battalion Royal Naval Division

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

92 No. 9.

Copy.

No. B695,928.

£200/–.

Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall and Son or order the sum of two thousand pounds Stg. and charge my account.
(Sd.) CHARLES G. COLLINS.

To Messrs. E. Curtice & Co., 7 Clarges Street, London, W.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

93 No. 10.

Thos. Cook & Son.

Bombay, 3rd May, 1917.

Messrs. Ganeshi Lall and Sons, Agra.

DEAR SIRS: We beg to confirm our telegram of today reading as follows: "Both Collins Drafts unpaid marked no advice.

We shall be glad to receive your further instructions in the matter.

Yours faithfully,
(Sd.) Per Pro THOS. COOK & SON.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

94 No. 11.

Post and Telegraphs.

DF LF 286 Yokohama I MS 12 LCD Ganeshihall Agra

Hold Drafts Sixty Lays Longer Delay Unavoidable.
COLONEL COLLINS.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

95 No. 12.

Thos. Cook and Sons.

Bombay, 25th June, 1917.

Messrs. Ganeshi Lall and Son, 13 Drummond Road, Agra.

DEAR SIRS: We beg to inform you that we have to day received a cable from our Head Office dated 22nd June reading as follows:

"Referring to your telegram of sixth Collins both drafts referred to not paid answer no advice."

and we have today wired you accordingly.

Yours faithfully,
(Sd.) Per Pro THOS. COOK & SON.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

96 No. 13.

Harry Morser.

37 Hatton Gardens,

London, 28th September, 1917.

Mr. Ganeshi Lall, Agra.

MY DEAR FRIENDS: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables which no

doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson Solicitors whom I have given every information and assistance that I could, I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close- to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy of which I have given to your Solicitors. I am extremely sorry that you have been the victim of a swindler, and up to the time of writing it has been impossible to find out where Collins is. Mr. Kemp is now working hand in hand with your Solicitors and you may rest assured that every-
97 thing is being done and watched by me in your interest.

My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing herewith a statement of my expenses, and I should be very glad if you will kindly remit same. I trust and pray that you may be spared this heavy loss and you can rest assured that everything is being done in your interest. I hope you are enjoying excellent health.

With kindest regards from my family to you and yours,

I am always,

Your sincere friend,

(Sd.) HARRY MORSER.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

98 Private and Confidential.

The Holborn Stadium.

85 High Holborn, W. C. 1,

13th September, 1917.

Henry Morser, Esquire, 37 Hatton Garden, E. C. i.

Re Charles Glen Collins.

DEAR SIR: I have to report that, acting upon your verbally conveyed instructions, having made inquiries respecting the above man, the information I have been able to obtain so far is as follows:

He is a member of the family of William Collins Sons and Company Publishers and Stationers, who carry on business in Glasgow, London and Australia, but he is in no way connected with the business. He is one of four brothers, two of whom, Godfrey and William, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highlanders and served with distinction in the Boer War. He subsequently went to the United States, where he married a Miss Wheeler, daughter of Mr. Wheeler, a member of a famous sewing machine manufacturing firm.

At the outbreak of war with Germany, he joined the Naval Brigade and was appointed to the Command of the Howe Battalion, and served during the Gallipoli campaign, he eventually returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally visited a Mr. and Mrs. Muntz. Mr. Muntz is believed to have served with Collins as a brother officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

99 Collins and Mrs. Muntz suddenly left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this Country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was settled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Pattison Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland M. P. who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this account or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's Will and these have been disposed of for the benefit of the Creditors.

100 I have interviewed Mr. Edward Curtice of 8 Clarges street Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins fam-

ily for many years, especially Charles Glen Collins. The last he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the present whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir,

Yours obediently,
(Sd.) WILLIAM B. KEMP.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

101 No. 14.

In the Court of the Chief Presidency Magistrate, Bombay.

Case No. 662/W. of 1917.

BRIJMOHAN LALA RAMKISSONDAS, of the Firm of Ganeshi Lall and Sons, Complainant,

vs.

Colonel CHARLES GLEN COLLINS, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.
2. That the offence of cheating and dishonestly inducing delivery of property is punishable under section 420 of the Indian Penal Code with either simple or rigorous impris-nment (the latter being imprisonment with hard labour) which may extend to seven years.

Dated this 30th day of November 1917.

(Sd.) T. J. STRANGMAN,
Advocate General of Bombay.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

102 Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate, Bombay, do hereby certify that a prima facie case of an offence of obtaining property by false pretences under section 420 Indian Penal Code within the jurisdiction of my Court in respect of jewellery valued at £2000 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offense punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the Seal of the Court this 1st day of December, 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

103 *Motion of Charles Glen Collins to Dismiss.*

Filed Oct. 26, 1918.

U. S. District Court, Eastern District of Louisiana, New Orleans Division.

No. 15928.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try appearer or to hear and pass upon the questions raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on the 13th day of February, 1918, Affidavit was made by Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans against appearer herein, Charles G. Collins before R. H. Carter, United States Commissioner of the Eastern District of Louisiana for the alleged offenses, matters and things referred to and declared upon in the affidavit by Gerard M. Loly, British Vice Consul at the City of New Orleans which is the basis of these proceedings, which said affidavit by the said Thomas F. Carlisle, His British Majesty's Consul General was for the purpose of having this appearer extradited from this Country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Loly, British Vice Consul at the City of New Orleans; that upon the said affidavit of Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans a warrant of arrest was issued by the said

R. H. Carter, United States Commissioner of the Eastern District of Louisiana and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal of the Eastern District of Louisiana acting under the authority of the said warrant issued by the said R. H. Carter, United States Commissioner for the Eastern District of Louisiana and this appearer was duly arrested
104 under the said affidavit which said affidavit is still pending and undisposed of.

2nd. Because the affidavit of Gerard M. Loly, British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons.

(*a*) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(*b*) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law by the said treaties particularly because the said Loly, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this appearer without day.

(Signed) CHARLES GLEN COLLINS.

(Signed) J. ZACH SPEARING, *Atty.*

105 *Affidavit.*

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct.

(Signed) CHARLES GLEN COLLINS.

Sworn to and subscribed before me this 22nd day of October 1918 at the City of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. ZACH SPEARING, *Not. Pub.*

106 United States District Court, Eastern District of Louisiana.

No-. 15927, 15928.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had Before the Honorable Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana, on the 30th Day of October, 1918.

Appearances:

Judge R. H. Marr, representing the Petitioner.
J. Zack Spearing, Esq., representing the Defendant.

107 Offer.

Judge Marr: We offer certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached; that is in the charge of Ganeshi Lall & Sons, Jewelers.

Offer.

I next offer a certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, in the matter in which the accused is charged with having fraudulently obtained jewels from the firm of Pohoomull Brothers.

Offer.

I offer in evidence the evidence taken before Sir John Dickinson, Knight, Chief Magistrate of the Police Courts in London, and the evidence taken in Glasgow before Alexander Stuart Duff Thomson.

And in connection with these offers are attached documents, certificates and exhibits annexed to the testimony, and, further, the admission that the accused at bar is the same person who stands accused in Bombay and for whom extradition has been applied.

Mr. Spearing: I will not make the admission that he is the same person that stands accused, because I don't want to admit that he is accused, but this is the person (referring to Charles Glen Collins) that is cited.

The Court:: You will admit that he is Lieutenant Colonel Charles G. Collins, late of the British Army?

108 Mr. Spearing: Yes; and that he is the person referred to in these papers.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates or copies that have been offered in evidence,

on the ground that they do not relate to and do not show the charge against the accused for an offence covered by any treaty between the Government of Great Britain and the Government of the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditable; that the papers offered in evidence relate to an offence entirly separate, different and distinct from the offence charged in the affidavits filed in this court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objections:

First. That the certificates are not in proper form——

The Court: Which certificates are you talking about now?

Mr. Spearing: The certificate——

The Court: Of the Consul?

Mr. Spearing: Of the Consul.

109 The Court: Well, let's see what is the matter with that; what is wrong with that certificate?

Mr. Spearing: There is another certificate there, the certificate——

The Court: That is the certificate of the Consul. Is that all right?

Mr. Spearing: That seems to be all right. The certificate of the Chief Presidency Magistrate in one case, it does not refer to the number of pages, it simply says the — number of pages. That is in the Pohoomull matter, and in the other, it refers to the foregoing pages from 1 to 29, I believe it is, whereas the "foregoing" if you give it its true and technical meaning, means that which precedes and not that which follows. That is, all the papers and documents in there, in my humble judgment, are not admissible under any statute, and I am going to make special objections to them, but we are dealing now, as I take it, with a matter that is entirely technical, we are dealing with papers that we have absolutely no opportunity of comparing with the originals, and they must, I take it, speak for themselves, and that when an officer gives a certificate——

The Court: There are twenty-nine pages here. Then he says "the foregoing" instead of "the following," and the only difficulty with that is that one is stuck in front, and if he had stuck it on the back, it would have been all right. I overrule that objection. It is all sealed up.

110 Objection.

Mr. Spearing: Now I object to any of the papers or documents. Neither one of the sets from Bombay, either by Pohoomull Bros. or by Ganesho & Sons has the warrant of arrest and the copy of the original deposition or depositions appended to the original warrant of arrest issued.

The Court: You don't object to the warrant of arrest, that is this first document here signed by A. H. S. Aston; that is all right; is it?

Mr. Spearing: There are two warrants of arrest.

The Court: Now then, the affidavit——

Mr. Spearing: In one case, the affidavit of the representative of Pohoomull and in the other case the affidavit of the representative of Ganeshi & Son.

The Court: That is down to the certificate on page 4. You don't object to that. You don't object to page 5 either, that is, the certified copies of the draft given and the letter written by Colonel Collins.

Mr. Spearing: Your Honor will see that there is an affidavit—I don't know which set your Honor has.

The Court: I have the first one that Judge Marr offered.

Mr. Spearing: You will find——

The Court: I have the one where he certified, "the foregoing twenty-nine pages," and it is headed "In the Court of the
111 Chief Presidency Magistrate, Bombay." Now then——

Mr. Spearing: The information of an Indian named Birjmohan Lala Ramkishandas, at Bombay, Manager of Ganeshi Lall & Sons.

The Court: Birjmohan Lala Rankishandas.

Mr. Spearing: That is the affidavit upon which the warrant issued. As I construe the section of the Revised Statutes, that is all that can be admitted from India?

The Court: Why?

Mr. Spearing: Because the section of the Revised Statutes provides:

"In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section."

112 The Court: Isn't there another section that admits the depositions?

Mr. Spearing: If there is, I am not familiar with it.

Judge Marr: Here is Section 5271:

"In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence shall be admitted and received for the purpose of such hearing, if they shall be properly and legally authenticated so as to entitled them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused person shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be

proof that such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section."

Mr. Spearing: That is the identical section I read. It says, "the depositions upon which an original warrant of arrest issued." It does not say "any depositions"; it confines and restricts it to "depositions upon which an original warrant of arrest issued, and that is the affidavit.

The Court: Which warrant does that refer to? That re-
113 fers to the warrant of the Commissioners in this country, does it not?

Mr. Spearing: On the contrary, it provides for the certificate by the Consular Agent "In every case of complaint and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended."

The Court: Here is this certificate: "I the undersigned, being the Chief Presidency Magistrate of Bombay, do hereby certify that the typed matter contained in the foregoing twenty nine pages is a true copy of the information of Brijmohanlal Lala Ramkishandas, of the firm of Ganeshi Lall and Son, Bombay, taken on solemn affirmation before me on the 1st day of December 1917 and of the depositions of the said Brijmohan Lal Lala Ramkishandas, Dattatria Ranchandra and Arthur Fuller in support thereof, sworn and taken before me on the 1st day of December 1917, and of the list of exhibits and of exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and of my certificate." That identifies them all with the papers, this bunch I have before me at any rate.

Mr. Spearing: There are two bunches with the same cer-
114 tificate.

The Court: Let's get through with this one first because I will look at them as we go along. Here is the information of Brijmohanlal, age twenty-five, occupation jeweller, residence Calcutta. Then he goes on to identify these various exhibits.

Mr. Spearing: I am urging that the only one of that bunch there that can be admitted in evidence is the affidavit commencing "In the Court of the Chief Presidency Magistrate at Bombay, the information of Birjmohan Lala Ramkishandas, of the firm of Ganeshi Lall & Sons," so that, I take it, is the affidavit on which the warrant issued; that is the charge.

The Court: According to this certificate, everything in this file was offered before this Indian court, and the warrant issued on all of this in here; so, as far as that goes, I will overrule that objection. Now I will take up those others.

Mr. Spearing: I except to the ruling of the Court, and the reserve this note in lieu of a formal bill of exceptions.

Mr. Spearing: The other one is the same, and there is no use of any longer taking up your Honor's time on that second one.

The Court: There are three of them.

Mr. Spearing: There is a third one to which that objection is good, I think.

The Court: This is the evidence of John Richard Campbell Howie and Edward Curtice.

115 Mr. Spearing: Those affidavits, that third one, may it please your Honor, you will find those are affidavits taken in London and in Glasgow.

The Court: James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Curtice.

The Court: Those were taken on the 22nd of June 1918, and the ones in Glasgow were taken coincident with them, either a day or two before or afterwards. I submit that as to those, that those sections of the Revised Statutes must be applied.

The Court: Here is the certificate from the Under Secretary of State for India that these documents would be received for the same purpose in India.

Mr. Spearing: Yes, but the Revised Statutes require something else than that. The Revised Statutes, I submit, do not authorize the reception by this Court in evidence of any documents or any testimoney that was taken after the warrant of arrest issued.

The Court: They do not?

Mr. Spearing: I think that the Revised Statutes is clear. The test is whether the documents offered in evidence would be admissible in the foreign country which requests the extradition, and the sufficiency of that evidence is a question to be decided by your Honor. I take it that your Honor can only receive the evidence taken in a foreign country and out of the presence of the accused, such

116 evidence as is affirmatively authorized by the statute, and that you cannot receive in evidence any other testimony, whether it be oral or documentary. It seems to me that the language of this statute is so plain that it does not admit of two interpretations, and that my friend on the other side is entirely wrong when he says that your Honor is governed in the admissibility of the testimony by the certificate of the foreign officer. That certificate cannot control your Honor, unless, under the law of this country, that certificate is made sufficient for the purpose.

The Court: I will sustain the objection as to the depositions from Glasgow and London.

Judge Mass: I reserve a bill to the ruling of the Court.

Mr. Spearing: I further object to the certificate of A. H. S. Aston, Chief Presidency Magistrate on the Ganeshi Lall affidavits and the certificate of Chunilal H. Setalvad, Acting Chief Presidency Magistrate. I object to those certificates on the ground that the certificates are no part of the testimony or depositions which were taken upon which the warrant was issued, and are but the expression and conclusion of the persons giving the certificates, which is not justified by the law, and is not binding upon this Court.

The Court: I don't think it makes any difference one way or the other. I will sustain that.

117 CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. What is your name?
A. Charles Glen Collins.
Q. You are the party referred to in these affidavits from India, which we have just been discussing?
A. Yes sir; I am.
Q. You were in India at the time these various transactions are alleged to have taken place?
A. Yes, sir.
Q. Were you alone, or did you have anyone with you?
A. I had people with me.
Q. Who were they?
A. My fiancee, Mrs. Muntz, and her friend, Mrs. Olsen.
Q. You subsequently married Mrs. Muntz?
A. Yes sir.
Q. And that is the lady here, sitting in the court room now?
A. It is.
Q. Mrs. Olsen is dead, is she?
A. She died last Thursday in San Francisco, in a hospital outside of San Francisco.
Q. And you have been endeavoring to have her come here to testify in this case?
A. We did; certainly.
Q. And upon the day the case was fixed for a hearing last Friday, you received a telegram stating that she had died the day before?

118 A. Yes sir.
Q. Where was the party consisting of yourself and Mrs. Olsen and the present Mrs. Collins made up?
A. In Christiania, Norway, on August 30, 1916.
Q. What was the occasion of going to Christiania; who lived there?
A. Mrs. Olsen had a country home there, outside.

The Court: What is the purpose of this testimony?
Mr. Spearing: I am just leading up to show how this transaction came about, and the good faith of it, to disabuse the mind of the Court that anything like a false pretence——
The Court: Do you think that any testimony in defence is relevant, or anything of that sort?
Mr. Spearing: Why certainly, if I can prove he didn't make any false pretences.
The Court: It doesn't make the slightest difference if he did or did not. It is a question for the court in India.
Mr. Spearing: I admit, if I prove as a matter of fact, there was no false pretence——

The Court: I have nothing to do with that whatever. The question of identity and sufficiency of these depositions is the only thing before me.

Mr. Spearing: That simply means that we can't take any testimony whatever.

The Court: It does not make any difference if Colonel Col-
119 lins should testify he made no false pretence, or anything of that sort. That is a question for the court over there, and not for this court.

Mr. Spearing: Of course if your Honor is going to rule that way, I will have to submit, but, with all due deference, I think your Honor is wrong.

The Court: I would like to see some case that says it is admissible.

Mr. Spearing: There are a number of cases which have gone up admitting testimony on behalf of defendant.

The Court: No question of defence can come before this Court in an extradition matter. That is a question for the court when the accused is tried in the country that requests his extradition. The only question here is the question as to the identity of the accused and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show: either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now he was there at the time and he admits he is the man.

Mr. Spearing: There is no doubt about that.

The Court: I will exclude everything else.

Mr. Spearing: To make up the record, counsel for the ac-
120 cused offers to prove that there was no false pretence on the part of this accused, but that, on the contrary, he made a full and absolute disclosure to the complainants, Pohoomull Brothers and Ganeshi Lall and Sons, and that they were fully advised of his financial condition and of the plans which he had, and the means which he had, of paying for these jewels.

The Court: What Colonel Collins is going to testify may be diametrically opposed to what the evidence is before me on these certificates, but I can't hear it.

Mr. Spearing: Will your Honor permit me to dictate into the record what I propose to prove by Mr. Collins.

The Court: Yes.

Mr. Spearing: I propose to prove by Colonel Collins that while Colonel Collins was in Christiania, Norway, he, in conjunction with Mrs. Olsen, by speculating in some shares of a steamship corporation, made a very large sum of money, approximately $150,000, or thirty thousand pounds sterling in the current money of Great Britain; that, shortly after making the profit above mentioned, said Mrs. Olsen, Mrs. Muntz and Colonel Collins started on a trip of rest and recreation, Colonel Collins being previously engaged in an active and vigorous share, as Commander of the Howe Battalion of the British Army, with the rank of Lieutenant Colonel, in what

121 is known as the Gallipoli Campaign during the war which started in July and August 1914, and is still in progress, and Colonel Collins having been invalided home on account of illness. That he had previously taken part in the Boer War, as an officer in the British Army. That after making this large profit above referred to, the party, consisting of himself, Mrs. Olsen and Mrs. Muntz, started on a trip; that among the countries visited by the said party as thus composed were Japan, China and British India; that while in Yokohama, Japan, during the month of October 1916, the said Mrs. Olsen and Colonel Collins had an interview with Mr. William H. Smith, a resident of the City of Boston, State of Massachusetts, at that time and now a resident of the City of St. Louis in this country, and at the time that the party were in Japan and China, Mr. Smith was temporarily located in Japan. That the accused and Mr. Smith had known each other some ten or twelve months previously and had done business together; that Mr. Smith sought an interview with the accused, and Mrs. Olsen was brought in because the profits which were made in the speculation or deal or transaction referred to were equally hers. That the said Smith stated substantially to the said Mrs. Olsen and to accused that he had the option to purchase certain very valuable oil leases in what was then known as the Goose Creek Oil Territory, a few miles out of the
122 City of Houston, State of Texas, and also cer- other very valuable oil leases in or near the City of Tampico in the Republic of Mexico which were controlled by one Charles D. Mitchell, a resident of the City of Houston, State of Texas, who was at that time the Vice-President and General Manager of the American Petroleum Corporation, incorporated under the laws of the state of Delaware, but operating in the Goose Creek Petroleum oil Fields, near the City of Houston; that the said Smith represented to the said Mrs. Olsen and to accused that there was an opportunity to make exceedingly large profits out of the said oil leases and lands, but that he, the said Smith was unable to finance the same and desired to secure financial assistance from some person or persons who were able to give it, and who would share the profits with him; that though the said Smith was previously unknown to the said Mrs. Olsen, he was known to and had an acquaintance with the accused, they having met and had dealings on prior occasions in the City of Boston and the territory adjacent thereto, which were visited by accused in former years; that after conferences and negotiations, the said Mrs. Olsen, the said Smith and accused entered into an agreement in writing dated at Yokohama, Japan, the 27th day of October 1916, by which the said three parties associated themselves for the purpose of financing, promoting or selling said oil property or leases situated in
123 Tampico, Mexico, and in the Goose Creek Oil Section, and that with that end in view the sum of two thousand pounds sterling of British currency, or approximately ten thousand dollars American currency, was paid and handed to the said Smith for the purpose and with the understanding that he would leave for the United States to consummate the purpose which the said parties then had in view; that the said Smith did in fact shortly thereafter leave

for the United States, with the said purpose in view; that in due time it became necessary to make further advances to the said Smith, or the said Mitchell with whom the said Smith had gotten into communication and with whom he was negotiating for the acquisition of the said oil properties both in Texas and in Mexico; that with the consent and co-operation of the said Mrs. Olsen, the sum of twenty-five thousand dollars was cabled to the said Mitchell in connection with the said transaction; that the said parties had the said oil fields, particularly those in the Goose Creek Section, examined and received most favorable reports of their condition and of the probabilities of large returns and large profits from the transaction and the said Mrs. Olsen, the said Smith and accused determined and agreed with the said Mitchell to acquire from the said Mitchell the oil leases and properties above referred to; that the said Mrs. Olsen and accused anticipated that they and the said Smith
124 would make exceedingly large profits out of the deal; that at that time they were negotiating with George McBain, of Shanghai, China, representing a very large oil syndicate, which was practically the only real competitor of the Standard Oil Company, for the sale of the same options and property to the said McBain for his oil syndicate at a tremendous profit. We further offer to prove that the accused and his party reached Bombay, in British India, about the middle or latter part of December 1916. That intending to remain there for several months, they rented a bungalow residence on Mallabar Hill, adjacent to Bombay, Mallabar Hill being a very fine residence section of Bombay, where they established themselves; that while thus residing at the said residence, they visited the business establishment of Bohoomul Brothers, hereinafter called the complainants, and at various times purchased numerous articles for household and personal use of considerable value in the aggregate, for which the said Mrs. Olsen and accused respectively paid the said claimant, either in cash or by bank checks or bills of exchange, which, when presented, were duly paid; that the said purchases extended over a considerable length of time; that among the articles examined by accused was the jewelry referred to in the affidavit of the British Vice-Consul; that the said claimants persistently urged accused to purchase the same, notwithstanding accused's re-
125 fusing to do so on the plea and for the reason as stated to said claimant, that accused did not have with him personally or to his credit at any place sufficient money to justify the outlay of the price of said jewelry for that purpose; that notwithstanding accused's explanation and statement that he was not then possessed of sufficient funds to justify the purchase of the jewelry in question, the complainants continued to press him to make the purchase, frequently visiting accused's residence above referred to with that end in view and offering to sell and deliver the jewelry to accused on credit; that accused explained to the complainants that he and the said Mrs. Olsen were engaged in the oil transaction or deal hereinbefore referred to, and that if he realized the profits which he anticipated, he would be in a position and able to purchase and pay for the jewelry referred to; that the complainants offered not only to sell and deliver the

jewelry in question to accused on terms of credit, but offered and insisted upon selling other jewelry upon like terms; that upon purchasing the jewelry in question, accused paid the claimants twenty four hundred and sixty six pounds sterling British currency or its equivalent, on account of the jewelry.

We further expect to prove by the accused that the prices finally agreed upon in the transaction above referred to were only reached after much negotiation, amounting to haggling, and after and
126 not until after the claimant was fully informed and advised on accused's inability to pay the balance of the price of the said jewelry in cash at that time and of his expectation of realizing large profits out of the oil transactions and deals hereinabove referred to.

We further expect to prove by the accused that even after the purchase of the jewelry referred to in the affidavit of the British Vice-Consul, the complainants continued to press and urge accused to purchase other and still more valuable jewelry from them on terms of credit, even sending their representatives with the jewelry to accused on board the steamer on which they left and to other cities which accused's party visited; that accused declined to accede to the requests of the claimants on the ground, and explaining to the claimants, that the said Mrs. Olsen and accused had not yet realized the profits which they anticipated from the oil transactions and deals.

We further expect to prove by the accused that neither he nor Mrs. Olsen nor Smith realized any profit whatever from the said oil deal, but that on the contrary the money which they invested therein is all lost through the machinations of Mitchell from whom they had an option.

We further expect to prove by the accused that accused did
127 not represent himself to the complainants as a wealthy man, except in the manner hereinabove referred to; that he did not represent himself as a partner of the firm of William Collins Sons & Company of Glasgow and London, nor did he represent himself as being at that time a colonel in the Howe Battalion of the Royal Navy Division, though accused had been a lieutenant Colonel of said battalion, and had rendered other services to the Government of Great Britain in the war with Germany which was then being carried on, as well as in previous wars, and that accused did not represent to complainants that he had a right to draw a draft, or is entitled to additional credit, except in the manner and to the extent hereinabove set out.

The Court: I don't think any of that is relevant, Mr. Spearing.

Mr. Spearing: I also want to offer Mr. Smith as a witness.

The Court: He will testify on the same lines?

Mr. Spearing: As far as this refers to. Of course he was not present when the jewels were purchased.

The Court: He will only testify to this oil transaction?

Mr. Spearing: That is all.

The Court: All right.

Mr. Spearing: I will offer the witness Mr. William H.
128 Smith, presently residing in the City of St. Louis.

The Court: This testimony is offered for the purpose of

orroborating the testimony that Colonel Collins would have given egarding the oil transactions?

Mr. Spearing: Yes.

Mr. Spearing: I also offer the agreement and options referred to n the statement of — Colonel Collins would testify to, and the cor-espondence consisting of letters, telegrams and cables, substantiat-ng the testimony as to the oil deals referred to in the statement of hat he would testify to.

The Court: I will exclude that also.

Mr. Spearing: I also now offer in evidence letter from Ganeshi & Sons to Colonel Collins, dated at Delhi February 25th, 1917.

The Court: Was that after the charge was made?

Mr. Spearing: No; before the charge was made. The charges were made in the latter part of 1917, and this was coincident with the purchase of the jewelry.

Mr. Spearing: I also offer in evidence original letter from Ganeshi to Collins, dated February 17, 1917, and the original statement of account furnished to the accused by Ganeshi & Sons, dated February 21, 1917.

I also offer cablegram from Ganeshi & Sons to Collins,
129 cablegram being dated Delhi, February 25, 1917, addressed to Colonel Collins at Bombay.

The Court: I will exclude those.

Mr. Spearing: I offer original letter from the attorney or solic-itors of Pohoomull Bros. of Bombay, dated July 12, 1917, addressed to Colonel Collins at the Manoir Hotel, and also an original letter from the same parties to Mrs. L. L. Muntz, bearing the same date July 12, 1917.

The Court: I think these are all irrelevant.

Mr. Spearing: Of course I am reserving an exception to the rul-ings of the Court.

The Court: All right.

Mr. Spearing: I also offer in evidence original letter from Pohoomull Bros., receipts and acknowledgments, by them dated as follows: February 27, 1917, being an acknowledgment of the check for 15,000 rupees, receipt dated February 27, 1917, being in the form of a letter of acknowledgment of a draft for four thousand pounds.

Also letter dated March 3, 1917, in reference to the draft, stating in substance that Pohoomull Brothers had instructed their bankers not to present the draft, also guarantee dated January 21, 1917, referring to a silk robe, and a statement showing the weight of cer-tain jewelry.

The Court: I exclude that. Those are all along the line of show-ing it is a commercial transaction.

130 Mr. Spearing: Yes; purely and only a commercial trans-action.

The Court: It was a commercial transaction?

Mr. Spearing: Certainly it was.

The Court: I will make the same ruling. I will exclude it all.

Mr. Spearing: I also offer in evidence numerous and various let-

ters and certificates, showing the military standing and title of the accused, before and after he was in India, but all before the charges were brought.

The Court: I think they are no more relevant than the others. I will exclude those. Is that all, Mr. Spearing?

Mr. Spearing: Yes sir.

The Court: I will look these documents over. I can't do it right now. Let the case go over until to-morrow morning.

Hearing resumed pursuant to adjournment.

Mr. Spearing: May it please the Court. At the risk of being thought entirely too persistent, I am going to simply call your Honor's attention to the provisions of the treaty between this country and Great Britain as to the form of trial, if your Honor will permit me to do so. I will read Article 10 of the treaty of 1842, which is the extradition treaty, or the treaty which contains the
131 extradition proceedings, the subsequent treaty or treaties merely adding to the crimes for which extradition may be had. It reads: "It is agreed with the United States and Her Britannic Majesty * * * deliver up those charged with the following offences" (naming them). "Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or persons so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed." Provided that it shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found as would justify his apprehension and commitment for trial if the crime or offence had been there committed. And then it goes on giving the jurisdiction and so forth.

A case very much in point is in the 25th Federal, case of Kelly, which was a case in Minnesota, 25th Federal, p. 268, In re Kelly, the syllabus of which reads: "On the examination of the party before the United States Commissioner in the State of Minnesota in extradition proceedings under the treaty of 1842 with Great Britain," which is the one I just read there, "he has the right to examine witnesses in his own behalf." Now, there are other cases to the same effect——

The Court: Did you look at this case of Charlton?

132 Mr. Spearing: I looked at that case; yes.

The Court: You see that disposes of your contention about the examination that you request.

Mr. Spearing: I beg your pardon?

The Court: I say it disposes of your contention.

Mr. Spearing: You mean with reference to the calling of witnesses from another state?

The Court: Yes sir.

Mr. Spearing: It merely says it didn't change the rule of evidence that theretofore existed.

The Court: That was in August of 1882?

Mr. Spearing: Yes, that is the one I read, and it does say it doesn't increase the right to give testimony, but that was a case in New York, that case, and this is a case here, in Louisiana, where it is well known and axiomatic that the accused before a committing magistrate has the right to put in any testimony in his own behalf, and the court, upon considering the testimony, determines whether or not he should be committed, and so your Honor must determine whether or not, upon all of the facts of the case, not merely an ex parte showing. This is more than a Grand Jury hearing. True in a Grand Jury—and that is referred to in the Charlton case—before a Grand Jury there is no compulsion to hear witnesses on be-
133 half of the defendant, or the accused, but this is an open hearing, this is not a Grand Jury hearing, and this is on a hearing, as I conceive the law, as though your Honor was sitting as a committing magistrate, and must determine in your position here whether or not this party must be committed to trial in India, and must determine that, not upon merely the ex parte testimony of those parties who live in India, but upon a hearing according to the laws of Louisiana, as it seems to me, as clearly set out in the extradition treaty. I submit with all seriousness, may it please the Court, where the treaty itself provides that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive of person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been committed there.

Now suppose that were here, in this city, and that Colonel Collins stood charged by those gentlemen from India living here, with having bought those goods under false pretences, just as they have charged him with having done there, and Colonel Collins was hailed before the committing magistrate, whether it would be before the First or the Second Criminal Court, depending on which side of Canal Street the offence was said to have been committed,
134 he would determine whether or not by the testimony before him for the State and for the accused, the accused should be committed for trial. Now it is clear, if your Honor does not agree with me, that there are cases where a person is arrested, he cannot be taken out of that jurisdiction for trial on this charge—there is that case where the person was attempted to be taken to another state, because it was contended that the judge of that state was sitting closer, so far as miles were concerned, closer in distance to where the man was arrested than was the judge of the district in which the marshal was acting, and the court held that the man arrested be returned to the district—meaning the state—in which he was arrested, and that the trial must be held according to the laws of that state. In this case in the 25th Federal—and there are others along the same line—all of these cases have heard testimony—and in that case in Minnesota, the court held that, according to the laws of Minnesota, the person whose extradition was sought, was entitled, if he had been charged with the same offense in Minnesota, he was entitled, under the laws of Minnesota, to have a hearing and to put in evidence in his own behalf, and, under those circumstances, he was entitled to

do it on extradition proceedings. That is what we are seeking here.

If the rule were as your Honor ruled this morning, why it is
135 easy to establish the identity of the person; Colonel Collins' identity can be established; there is no necessity of admitting it; there is no necessity of denying it, because it can be established he was there; there wasn't any question about that, and if those are the only two points that can be heard upon an extradition procedure, then I submit, if the Court please, that anyone who has a personal, professional or commercial claim against another, all he has to do is to make affidavit setting out facts and circumstances, and the party must be taken to that foreign country, whether close or near, to answer the charge there, with a result that no one knows. I submit that is not the law, and moreover, this country has sought to conserve and protect the rights of those who sought an asylum, and, if you will, whether it was justifiable or not, those who were found in the state, to give them the rights they would have if charged with a similar offence under the laws of that state where they may be. Take that testimony, your Honor, as before you there. It places this accused at a very very great disadvantage. True your Honor has held that it is admissible, and that the certificate as given is admissible, but your Honor must conclude that that is nothing but a lot of hearsay evidence. As I recall it, there is in this letter from those London solicitors to a man living in Bombay, telling their London
136 solicitors, telling their clients in Bombay, what their investigations in London—not under oath—none of those letters are under oath—why they produce that letter to the judge in Bombay, and it is in the record, and your Honor has admitted it as though the man who is presumed to have written that letter had absolutely testified to the facts. You have a letter from a man by the name of Morser to Ganeshi & Sons, stating his investigation, and he finally concluded it was necessary to employ a private detective, and then you have the report of the private detective. Why if that is admissible, anybody that is found in this country——

The Court: The certificate says it would be admissible.

Mr. Spearing: It would not be admissible here.

The Court: The certificate says it would be admissible.

Mr. Spearing: I see, but it would not be admissible here. Your Honor has admitted it already because the certificate of the United States Consul is there, but if it is admissible here——

The Court: All of this evidence was admitted before the magistrate.

Mr. Spearing: The magistrate, yes, and the United States Consul has said that it is admissible there, but your Honor knows it
137 would not be admissible here; your Honor would not admit that testimony here if the accused was charged with an offence here and it was attempted in this country to offer in evidence on any trial, civil or criminal, a letter from an attorney——

The Court: Yes, but they may have different rules of practice if they want to.

Mr. Spearing: If they want to, among their own citizens or citizens of other countries that are found there—they have got to submit to it; but this treaty, I submit, may it please the Court, is to the con-

trary; this treaty says that the hearing shall be—not according to the rules of the country seeking his extradition—but according to the rule of the country, the rules of the place, whether it be Louisiana or California or Ohio or Maine, the rules of the place where the accused is found.

The Court: But that still does not make this inadmissible.

Mr. Spearing: No sir; not under the certificate. I only mention that character of testimony that is in there to show what a hardship it is on the man who is arrested in a state like this and is sought to be taken to a place like India, where they admit testimony of that kind, and it may be that the officials, the high officials of Great Britain and of this country, concluded that they wouldn't be
138 willing to give up the person who is even temporarily in that country, even though, if you will, with a bad purpose, though in all seriousness I don't believe that the accused was here for a bad purpose, but they were not willing to give up the party unless after hearing, as it states here, according to the laws of the place where the fugitive or person so charged shall be found—and this is the place where he was charged and found, and this is the place that shall govern the manner of the trial, and not what shall or shall not be admissible under the laws of India. It is true that under the laws of this country, under those Revised Statutes 5271, inasmuch as the consul of this country has certified that under the laws of India that testimony is admissible, and inasmuch as your Honor has construed that that was the testimony upon which the warrant was issued, of course that is admissible here under that ruling; it would not be admissible if this was an original trial, admissible here, but I submit that is all the more reason why this accused and his witnesses should be heard, and then your Honor may conclude whether or not there is such a probable cause as would justify the turning over of this accused to an officer of the foreign government, to be taken back to India, where testimony of that character may be admitted against him. Take that report of the private detective in London, hearsay of the worst kind. It may be that that is
139 admissible in India. Your Honor knows, and I know, that it is not admissible here, though under your Honor's ruling, if the certificate is attached, it is admissible in this case.

The Court: I say, it is a settled rule of this Court that, in extradition proceedings, no matters of defence are admissible; there are only two questions that can be inquired into, the question of identity and the question of whether the accused was present in the demanding state at the time the crime was supposed to have been committed. It has been ruled that way many times. So far as I know, I have not been the first one that has ruled that way.

Mr. Spearing: In my investigation, I didn't come across any.

The Court: The question of foreign extradition is somewhat—this is the first case I have been called upon to hear myself, because usually it goes before the Commissioner, but that is a habeas corpus proceeding——

Mr. Spearing: Your Honor will recall that in this Charlton case, that was under a treaty with Italy, and that is the way the court con-

strued it, and in construing this section of the Revised Statutes——

The Court: The treaty with England is the same.

Mr. Spearing: There is a little difference.

140 The Court: No material difference.

Mr. Spearing: The court says there is not and cannot be any uniform rules as to when an examining magistrate shall hear the witnesses produced by the accused person. The proceeding is not a trial; it is confined to a single question, whether the evidence presents a prima facie case sufficient to hold the party for trial.

The Court: That is usually regulated by local statutes. The local statute here does regulate that and does admit the testimony.

Mr. Spearing: Your Honor knows, of course that in these extradition proceedings, after it leaves this court, it is different from what is ordinarily the course, because the only way you can get an appeal is by a habeas corpus; there is no appeal or writ of error in the technical sense.

The Court: Unless you have the right to apply to the Secretary of State.

Mr. Spearing: We have no right to appeal to the Secretary of State in the sense that we take an appeal from the judgment of a court.

The Court: Well, I don't know in that sense exactly, but I imagine that you would have the right to apply to the Secretary of State and there present such evidence as he cares to hear. The governor

141 of one state, the governor of Mississippi, sent a request for the extradition of a fugitive from the State of Mississippi, why the governor of the State of Louisiana would have authority to hear and determine whether or not to issue the warrant or not, upon the warrant of the magistrate of the demanding state. I don't know whether you have that right to appeal to the Secretary of the United States or not.

Mr. Spearing: I don't know. There is no provision which requires or permits that as a legal right. The only thing to be done would be to make certain representations to the Secretary of State.

The Court: Why don't you make those representations?

Mr. Spearing: The representations of the judge who heard the case are entirely and essentially different. There is no testimony heard in the sense of a trial, before the governor of the State; all that he requires is that there has been a warrant of arrest, that there has been an affidavit and a warrant of arrest, and if the accused is in the State. Now it has happened again and again that the governor of a state has said "No, I will not deliver up this fugitive." Your Honor will recall the well known case; I think it was a man by the name of Taylor, connected with the accused governor at the time of Kentucky, when Goebel was killed. He fled over to the other

142 side *side* of the line, and the governor of Indiana says, "No, I will not give up Mr. Taylor; you can't take him into Kentucky for a trial." That was long after the close of the trial of the case. The laws of the various states are practically the same, and a man tried in Louisiana—I am talking now about a man against whom there is no local prejudice, as there was undoubtedly against Taylor in that instance—he is just as apt to get a fair trial in one

state as he is in another, I know of one case when Governor Hall——

The Court: Isn't Colonel Collins just as apt to get as fair a trial in India?

Mr. Spearing: In my judgment, no sir. The very fact that they admit in evidence a letter from the complainant's counsel or solicitor to him, a letter from a friend of his telling his conclusions from investigation that he had made, and a report from a so-called private detective, the fact that they admit all of that in evidence, to my mind, I think, is conclusive evidence that he could not get a fair trial, because if that evidence is admissible there, he cannot get a fair trial there, and he cannot get a fair trial any where where they admit that.

The Court: What about taking testimony in foreign countries by commission?

Mr. Spearing: Oh, they may take testimony, if the court
143 please, but these are ex parte statements.

The Court: I don't know if they are admissible in the trial on the merits there; they are admissible before the committing magistrate for the purpose of starting the proceedings, just as evidence on information and belief would be admissible before me for the purpose of starting these extradition proceedings. This was brought out in the Charlton case. Charlton made a strong effort to resist extradition. When he went back he was acquitted of the crime of murder; he was found guilty of manslaughter and sentenced to one year.

Mr. Spearing: But in the Charlton case there was no attempt to introduce testimony that he was not prima facie guilty. The testimony there was as to something subsequent to the commission of the offence.

The Court: It was a matter of defence.

Mr. Spearing: But that did not enter into the prima facie case. There is no situation where a man, if he is inclined to do so, cannot make out a prima facie case. Your Honor knows that, of course, in your practice and in your judicial proceedings, just as does any other lawyer. Now these men make out a prima facie case, to a very great extent, if not entirely, by, not testimony, but the statement of these witnesses, so called in London, who have made these investi-
144 gations, and the question comes up, how these witnesses are here and how they are going to get over to India, and I urge your Honor that this Charlton case merely follows the general rule, that it is the character of the law that is to control in the place where the accused is found.

The Court: Let's see what these people say here.

(Documents handed to Judge, who peruses same.)

Mr. Spearing: That letter from Morser and that report of the private detective are in the Ganeshi matter. I don't think they are in the Pohoomull matter. There are the letters.

(Counsel hands documents to the Judge.)

The Court: That is what I ruled out, is it not?

Mr. Spearing: No; it was this that you ruled out.

Mr. Spearing: This is a letter from Harry Morser to Ganeshi Lall, and here is the report of the so called private detective to whom he referred the case in London.

The Court: How much is the rupee to the pound?

Mr. Spearing: I don't know sir.

Judge Marr: Fifteen. Your Honor will observe there is nothing in any of the evidence that would indicate a value, that is, that the Court would know anything about—I am not talking about
145 the individual who occupies the bench, but I don't know if the Court will take judicial notice of the pound.

The Court: Sure, I will take notice of what a rupee is, that is, its approximate value. I couldn't take notice of the actual rate of exchange.

The Court: All right, Mr. Spearing. I have read the evidence now.

Mr. Spearing: I assume your Honor has not changed your mind with reference to the admission of this testimony that I offer?

The Court: No.

Mr. Spearing: Then I submit, if the Court please, that the record as made up doesn't show any offence, criminal in its nature, and that this is an attempt on behalf of those jewelers;

The Court: There are three different people. He went to one man and bought certain lots of jewelry and gave them a check for five hundred pounds, which was paid, gave a draft for two thousand pounds on Curtice & Co., or whatever it was, and gave them a promissory note. Now that Curtice note or draft was not paid and came back with the notation "Not authorized to draw." Before he gave that, the evidence shows that he went to the International Bank, and they suggested that he send a telegram to have his agents in London pay the International Bank sufficient funds to cover this
146 other draft—what was it, five thousand pounds?

Mr. Spearing: Five thousand pounds was the Pohoomull matter.

The Court: He came back and he told the men that he had sent the amount, that it was all right and that the money would be paid, and they accepted the draft, and then the money was not paid. That draft was dishonored, "No authority to draw." Now, take those two transactions just by themselves, that makes a clear case prima facie of obtaining goods by false pretences.

Mr. Spearing: In the Ganeshi matter the amount involved was four thousand five hundred pounds, of which he paid five hundred pounds in cash.

The Court: Paid five hundred pounds.

Mr. Spearing: Paid five hundred pounds; he gave his note for two thousand pounds and gave a draft on Curtice & Co. for two thousand pounds in the Pohoomull matter——

The Court: Well, I attach no particular importance to the note. A man might give his note and for various reasons might not be able to meet it; that is a mere promise to pay.

Mr. Spearing: Well, isn't a time draft the same thing?

The Court: I don't think so.

Mr. Spearing: There was a time draft there also.

147 The Court: A draft is exactly like a check on a bank. A man has no business to draw drafts unless he is authorized to draw them.

Mr. Spearing: The difference between a draft, may it please the Court, and a check on a bank is that the check on the bank is a promise to pay at sight, is an order to pay at sight; a check is entirely separate and distinct from a draft in that it is an immediate order and presumes that the amount is there at that time. A time draft—and in each instance these were time drafts—does not carry with it a suggestion that there are any funds in hand at that time, but it is merely like——

The Court: Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn't make the slightest difference. If this case was tried before a jury, and there was no evidence that he told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation "Not authorized to draw," and nothing else but that, the jury would be warranted in finding him guilty.

Mr. Spearing: I submit that would not be so on a time draft, because a time draft is nothing more than a promise that when it matured it will be paid, just as a term note is, and I submit——

148 The Court: Will be paid by the person on whom it is drawn.

Mr. Spearing: It will be paid and there will be money there to pay it.

The Court: That he was authorized to draw it and it will be paid, and it also imports that the party on whom it is drawn will accept it for payment when it is presented.

Mr. Spearing: There is nothing patent here, even on that ex parte statement, showing that it was ever offered for acceptance, any pretence that it was ever offered for acceptance, or that anybody ever indicated that it was to be presented for acceptance?

The Court: It was presented for payment and returned with the notation he was not authorized to draw.

Mr. Spearing: And then it was presented again. In one of those, and I think in both of those, the telegram of the accused to both of these parties that he hadn't completed his financial arrangements and not to present the draft for another sixty days—that is all in there. In the Pohoomull matter the amount was larger, and he first gave a draft on Curtice for five thousand pounds, but that draft was subsequently surrendered so they testify—they apparently had it still in their possession—at all events, it was cancelled.

The Court: They gave a fifteen thousand — check to pay back to him when the draft was paid, and it was in that transaction

149 that he made the statement about having telegraphed, that the money would be paid to the agents of the International Bank in London.

Mr. Spearing: I think your Honor will find——

The Court: Of course the point applies in the other one.

Mr. Spearing: I think not. In that transaction, it was the first

draft for five thousand pounds that was taken to the International Bank, and then they suggested that cablegrams be sent to ascertain if that would be paid, and it was after that that draft was cancelled, the one thousand pounds was paid and another draft on Collins & Co. for four thousand pounds was given. That was that transaction. Now it seems to me that this also—I must necessarily be confined in the argument before your Honor to what is shown in those affidavits—those affidavits also show that these parties had other transactions, and I submit the conclusion is very clear: It is merely a bargain and sale on credit.

The Court: All these transactions were just at that time?

Mr. Spearing: And the other transactions at that time preceding that.

The Court: All within the space of a few days.

Mr. Spearing: Comparatively few days; a week or two; may be two weeks, and those transactions were all paid, the goods
150 were paid for, and there is no question about that, and here these goods subsequently were purchased, and when you come to Pohoomull, that testimony indicates that it was nothing more nor less than a commercial transaction, a bargain and sale upon terms of credit.

The Court: Induced by false pretences.

Mr. Spearing: Of course if your Honor concludes it was false pretences, but I am trying my best——

The Court: It is quite patent on the face of the papers. Here is a man buys some ten thousand pounds' worth of jewelry, nine thousand pounds' worth of jewelry or something like that, and drew drafts on people that returned them with the notation that he was not authorized to draw, why it is fraudulent on the face of it. There is no reason why anybody should buy jewelry unless you have got the money to pay for it; buying flour or something else, why it would be different, but with pearl necklaces and things of that sort——

Mr. Spearing: I submit that the character of the goods purchased does not affect the criminality of the act in the least.

The Court: Not in the slightest, but it has some effect on the testimony.

Mr Spearing: If a person goes down to one of the jewelry
151 stores here and buys a large amount of jewelry on the representation that he is wealthy and will pay for it as a future date?

The Court: That is a different thing. If he goes down and represents himself as a wealthy man and will pay at a future date, that may or may not be a case of fraud, but when he goes and says "I will pay you now, not in the future, but I will give you a draft right now; I have teleegraphed these people and they have deposited money in the International Bank and the money will be paid," that is just like giving a check on a bank. It is not a credit transaction at all, that is a cash transaction, and when he is not authorized to draw those checks why it is clear fraud; there is no other way to state it. It makes no difference whether Lieutenant Colonel Collins was or was not—I put all that to one side. Here is evidence tending to show he was an undischarged bankrupt and those sort of things, but just on that

ansaction itself, buying these articles of jewelry and giving drafts, hich drafts were returned with the notation "Not authorized to aw," I say that makes a prima facie case of fraud, obtaining goods fraudulent pretences.

Mr. Spearing: Of course if your Honor has reached that conclu-on, there is nothing that I can say that can change your con-usion.

The Court: Not a thing; there is nothing you can say to
52 change my conclusion on that state of facts.

Mr. Spearing: That is the only state of facts before you, be-ause your Honor will not permit any other than those facts to go in. n my statement I said he didn't represent that he had the right to raw the drafts.

The Court: That is a question for the jury over there.

Mr. Spearing: That evidence is not in. There is not any doubt pparently about the amounts he paid, and decidedly there is no loubt that this man told those people "I am in this oil deal and I ex-ect to have the money then; I have not got it now; I expect to have he money then and have funds to pay this amount." There is not a article of doubt about that, and there is no more criminality about hat than if I were to go into a bank and buy ten thousand dollars' worth of jewelry, and say "I am in a deal by which I expect to make ifteen or twenty thousand dollars"——

The Court: That is all a matter of defence that will have to be made to the court in India.

Mr. Spearing: Unfortunately it does not go to England.

—Jessup—Slug TEN—

Mr. Spearing: It goes to India, where, with all due deference——

The Court: They have trial by jury there.

153 Mr. Spearing: I assume so, probably native Indians.

The Court: By a jury of white men.

Mr. Spearing: Frankly, I don't know whether it is by a jury of white men; I think not; I don't know whether it is or not.

Judge Marr: The Inspector of Police told me all Europeans were tried by white men.

The Court: I know that.

Mr. Spearing: One of the judges that signed these orders is an Indian, a native Indian.

The Court: Well, they don't try Englishmen with native juries.

Mr. Spearing: Well, I don't know about that.

The Court: I know they don't. He has just the same opportunity of making his defense there; that is where he is charged and that is where he ought to make it.

Mr. Spearing: The case I have here is one where the Court there, the Supreme Court, 187 U. S., held that extradition proceedings should not be used as a means of collecting debts.

The Court: No doubt about that; I don't think so either.

Mr. Spearing: I submit there is nothing in any of these papers except that these men want to collect a debt which is due by——

The Court: I have no doubt if they had been paid they wouldn't have made the charge.

154 Mr. Spearing: I have no doubt if they were paid now, they would withdraw the charge.

The Court: Then why not pay them——

Mr. Spearing: For a very good and sufficient reason——

The Court: —give them back the property or something.

Mr. Spearing: For the very good and sufficient reason, because they have not the cash with which to do it. With all frankness; they have been arranging to get it.

The Court: Haven't they got the property that they bought?

Mr. Spearing: They have not got it so it can be delivered, no sir.

The Court: It is unfortunate. There is nothing for me to do but to hold Colonel Collins for extradition. I will make such order and I will facilitate you in any way in making up your record you want to. Of course you can still apply for a habeas corpus, if you get busy right now. There are two circuit judges here now, with jurisdiction in a case of that kind, and if they turn you down, you can go to the Supreme Court of the United States, but they will be leaving here on Saturday, and they won't be back until some time in the latter part of November.

155 *Affidavit of Complainant, Exhibits, Certificates, and Deposition of Witnesses.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 26th, 1917, fraudulently, falsely and feloniously pretended to Mahomed Ali Zainal Ali Raza, at Bombay, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a colonel in the Howe Battalion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had a right to draw a draft for seventeen hundred pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Company were bankers; whereas, in truth and in fact, as he, the said Collins, then and there, well knew, he, the said Collins, was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Battallion of the Royal Naval Division and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds or

for any amount on said Messrs. E. Curtice & Company, and
156 said Collins then and there well knew said draft would not be paid; that the said E. Curtice & Company were not bankers; That by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said Mahomed Ali Zaimal Ali Raza one pearl button of the price and value of seventeen hundred pounds, of the property and goods of the said Mahomed Ali Zaimal Ali Raza, which said pretences were to the knowledge of said Collins at the time of making same, false and fraudulent; and affiant further says that the said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is based, is as follows:

The evidence taken on said charge in the Chief Presidency Magistrate's Court, at Bombay, India, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, and the evidence taken before Alexander Duff Thompson, at Glasgow, salaried Sheriff of the Sheriffdom of Lanarkshire, duly certified according to the provisions of Section 5271 of the Revised States of the United States.

(Signed) T. F. CARLISLE.

Sworn to and subscribed before me this 8 day of November, 1918.

(Signed) RUFUS E. FOSTER, *Judge*.

157 *Certificate.*

Calcutta, India, April 8th, 1918.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradiction from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunal of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.] (Signed) JAS. A. SMITH,
Consul General of the United States of America at Calcutta, India.

158 *Certificate.*

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant

Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and on the information and depositions on which was granted, are the signatures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,
Secretary to the Government of India in the Foreign and Political Department.

Simla, the 2nd April, 1918.

159 Case No. 1463/P. of 1917.

No. 1463/P. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 the property of Mahomed Alli Zaimal Ali Raza.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 1st day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

160 In the Court of the Chief Presidency Magistrate, Bombay.

In re MAHOMED ALI ZAIMAL ALI RAZA, Complainant,

VS.

LT. COL. CHARLES GLEN COLLINS, Accused.

Charge: Cheating, Sec. 420, I. P. C.

I the undersigned being Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the foregoing 17

pages of paper is a true copy of the depositions of Mahomedali Zaimal Ali Raza, Kaikhushru Dadabhoy Rustomji Dady, Brijmohaklal Lalla Ramkisondas and John Mathew Perreira sworn and taken before me on the 1st day of December 1917 and of the list of Exhibits and of Exhibits thereto marked A, B, C, D, E, F, and XI and of my certificate.

Given under my hand and the seal of the Court this First day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON.
Chief Presidency Magistrate, Bombay.
E. J. M.

161 Case No. 1463/P of 1917.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Mahomedali	Father's name Zainali Ali Raza
Religion Mahomedan	Caste Arab
Age about 38	Occupation Pearl and Grain Merchant
Residence Sitaram Gully	District Hornby Road

Examination-in-chief:

I know Mr. Dady. In January 1917 he came to me and gave me certain information. In consequence of it I accompanied him to Malabar Hill. I saw Lt. Col. Collins and Mrs. Olga Olsan. I took pearls with me. I showed accused a bunch of pearls. He selected some pearls. I had them made up. I think there was some conversation about giving credit at the first interview but I am not quite sure. After the necklace was made up I went to Col. Collins again. Mr. Dady was present, Mrs. Olga Olsan was present and Col. Collins and Mrs. Muntz. Col. Collins was speaking with me through Mr. Dady because I don't know English properly. I understood that Col. Collins was a big man and very wealthy and partner of Messrs. Collins and Sons. He also gave me a diary saying it was the diary of their office. This is like the diary he gave me marked X for identification. He said he had many shares worth thousands of pounds. He told me Mrs. Olsan was very wealthy. He produced a letter purporting to show that Mrs. Olsan had £14000 to her credit at a London Bank. He took Mr. Dady aside and spoke about payment. I thought Mr. Dady was a big man also and I believed the rep-
162 resentations made to me and agreed to give the pearls on credit. Col. Collins chose a pearl button for himself from me. He saw the pearl button from the beginning and liked it. He said he would come back and purchase it after he had visited his

Rajah friends. On February 26th I went to see him again — Malabar Hill. He took the pearl from me that day. He asked me to give that for credit also. It was a pearl of 52 Chavs and 38¾ cents 8 carats 93 cents. I sold it for £1700. He gave me a cheque for the pearl. I promised not to present it for 70 days until the 5th May. I paid in the cheque to the International Banking Corporation for collection. The cheque has been sent to London. I received this letter from the International Banking Corporation Ex. A. The cheque was drawn on Messrs. C. Curtice and Company 8 Clarges Street London.

If I had known accused was an undischarged bankrupt I would not have accepted the cheque. I believed accused's representations that he was a partner in William Collins and Sons. If I had known C. Curtice and Company was a boarding house and not a Bank I would not have accepted the cheque. Nothing has been paid to me.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

163 EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Kaikhushroo	Father's name Dadabhoy Rustomji Dady
Religion Zoroastrian	Caste Parsi
Age about 35	Occupation Commission Agent
Residence Waterloo Mansions	District ——

Examination-in-chief:

I know complainant. I know Col. Collins. A friend of mine Mr. Furdunji came to me and told me that a friend of his Col. Collins wanted to buy some pearls and wished me to call on him. He gave me a letter of introduction to Col. Collins. I went there about the end of January or beginning of February 1917. I went to the Bungalow at 8 Harkness Road Malabar Hill. I saw Col. Collins, Mrs. Olsan and Mrs. Muntz. Col. Collins introduced me to the ladies. Col. Collins talked about buying pearls for a pearl necklace. I said I know a party who had a very large stock of pearls. Col. Collins said he wished to buy pearls up to £6000. I called on complainant after that. Next day we both went to Col. Collins' bungalow. Mrs. Muntz was not present. Mrs. Olsan and Col. Collins were there. Mrs. Olsan selected a string of pearls out of a large mass of pearls shown to her. She wanted the complainant to make them up into a necklace. At this particular time after complainant had gone downstairs accused broached the subject of credit. I told him I

would ask the complainant and let him know. I mentioned the matter to complainant in the motor on the way back. Complainant asked me to make enquiries and let him know whether he
164 was a desirable person to whom to give credit. I consulted Mr. Furdunji. He gave me certain information. After that we went to Col. Collins with the necklace and some other pearls. Both ladies were present and Col. Collins *Col. Collins* showed us a necklace which Mrs. Muntz had on. Col. Collins liked a button which complainant had. It was subsequently sold to Col. Collins for £1700—. During the negotiations Col. Collins gave us 2 diaries one for complainant and one to myself. Shown X and another diary. These are — they put in Ex. B. and Ex. C. Accused wrote in the diaries. He said William Collins and Sons was his firm, that he held a considerable number of shares, that he was a partner in the firm, that he was on 6 months' leave and would not take an active part in the business. This took place on the 26th February. Accused gave a demand draft to complainant asking him to present it 2 months later. So far as I know it has not been realised. The accused Col. Collins seemed a tall man, square jawed, with fair hair. I think his eyes were grey. I seldom saw him smile. He seemed to have a very serious face. He was clean shaven. He used to walk quite straight. He was dressed well but not showily. He appeared to me to dress rather quietly. He has a long face and a square jaw.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

165 EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal.	Father's name Lala Ramkisondas.
Religion Hindoo.	Caste Khatri.
Age about 25.	Occupation Jeweller.
Residence Calcutta.	District ——.

Examination-in-chief:

I am a complainant in another case against Col. Collins. I had correspondence with friends in London regarding the accused. I had enquiries made. My friend Mr. Harry Morsar wrote me this letter Ex. E enclosing this report Ex. F. The letter bears Mr. Harry Mosar's signature. I know it.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

166 EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is John Mathew.
Religion Christian.
Age about 50.
Residence Mazagaon.
Father's name Parreira.
Caste.
Occupation Assistant International Corporation, Bombay.
District ——.

Examination-in-chief:

On the 27th February 1917 I received a draft for £1700 on Messrs. G. Curtice and Company signed by C. G. Collins for collection. I produce a certified copy of the entry in the ledger marked XI. The draft is lying unpaid at our London House.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

167 *List of Exhibits in Case No.* 1463/P. *of* 1917.

X. Diary of Complainant's Haji Abdulla Ali Raza.
A. Letter from International Banking Corporation dated 10th May 1917 to complainant.
B. Name of the Colonel in the diary.
C. Name of Mrs. Olga Olsan.
D. Name in 2nd Diary written by the Colonel.
E. Letter.
F. Report.
XI. Certified copy of the entry in the ledger.

(Sd.) P. DAVID,
Judicial Clerk,
Chief Presidency Magistrate's Court, Bombay.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

168 Ex. A.

International Banking Corporation.

Bombay, 10th May, 1917.

Haji Abdulla Aliraza, Esquire, Bombay.

C. G. Collins Bill on G. Curtice & Co. £1700 Our No. B. C. 17/211.

DEAR SIR: We have received cable advice from our London Manager stating that the above is unpaid. The reason given for dishonour is "no funds."

Please instruct us and hand us Rs. 73/12/ as under at your earliest convenience:

¼% Commission on £1700.....	Rs. 63-12-0
Cost of London cable.....	Rs. 10- 0-0
	Rs. 73-12-0

Any further charges in this connection will be received from you on receipt of advice from London.

Yours faithfully,
(Sd.) ——— ———, *Manager.*

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

169 Ex. B.

Lieut. Colonel C. G. Collins,
Charles G. Collins,
C. M. G.,
c/o Messrs. Wm. Collins Sons and Co., Ltd.,
Glasgow, Scotland.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

170 Ex. C.

Mrs. Olga Olsen,
3 Bryanston Square,
London, W.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

171 Ex. D.

Lieut. Col. C. G. Collins,
Charles G. Collins,
C. M. G.,
c/o Messrs. Wm. Collins Sons and Co., Ltd.,
Glasgow, Scotland.

True copy.
[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

172 Ex. E.

Harry Morser.

37 Hatton Gardens,
London, 28th September, 1917.

Mr. Ganeshi Lali, Agra.

MY DEAR FRIENDS: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables which no doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson's Solicitors whom I have given every information and assistance that I could. I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close- to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy of

ch I have given to your solicitors. I am extremely sorry that have been the victim of a swindler, and up to the time of writing as been impossible to find out where Collins is. Mr. Kemp is working hand in hand with your Solicitors and you may rest red that everything is being done and watched by me in your rest. My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing with a statement of my expenses, and I should be very glad if will kindly remit same. I trust and pray that you may be red this heavy loss and you can rest assured that everything is g done in your interest. I hope you are enjoying excellent lth.

With kindest regards from my family to you and yours,

I am always,

Yours sincere friend,

(Sd.) HARRY MORSER.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

Ex. F.

Private and Confidential.

The Holborn Stadium.
35 High Holborn, W. C. 1,
13th September 1917.

Re Charles Glen Collins.

nry Morser, Esquire, 37 Hatton Garden, E. C. 1.

DEAR SIR: I have to report that, acting upon your verbally con-ed instructions, having made inquiries respecting the above man, information I have been able to obtain so far is as follows:

He is a member of the family of William Collins Sons and Com-y, Publishers and Stationers, who carry on business in Glasgow, ndon and Australia, but he is in no way connected with the busi-s. He is one of four brothers, two of whom, Godfrey and Wil-m, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highlanders d served with distinction in the Boer War. He subsequently went the United States, where he married a Miss Wheeler, daughter of . Wheeler, a member of a famous sewing machine manufacturing m.

At the outbreak of war with Germany, he joined the Naval Bri-de and was appointed to the Command of the Howe Battalion,

and served during the Gallipoli campaign; he evidentually returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally
175 visited a Mr. and Mrs. Muntz, Mr. Muntz is believed to have served with Collins as a brother-officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

Collins and Mrs. Muntz suddenly left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was settled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Patterson Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland, M. P., who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this ac-ount or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's will and these have been disposed of for the benefit of the Creditors.

I have interviewed Mr. Edward Curtice of 8 Clarges Street, Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins
176 family for many years, especially Charles Glen Collins. The l-st he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the present

whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir,

Yours obediently,

(Sd.) WILLIAM H. KEMP.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

177 XI.

Memorandum.

From the International Banking Corporation.

Bombay, 1st December, 1917.

To the Police Court, Esplanade, Bombay:

We hereby certify that we received for collection on 27th February 1917, from Mohomedally Zainal Aliraza, a bill drawn by C. G. Collins on G. Curtice and Co. 8 Clarges Street, London W. for £1700 (Pounds one thousand seven hundred).

The bill is at present held by our London office unpaid.

INTERNATIONAL BANKING CORPORATION,

(Sd.) —— ——, *Manager.*

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

E. J. M.

178 Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate of Bombay, do hereby certify that a prima facie case of an offense of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the seal of the Court this 1st day of December, 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

E. J. M.

179 United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had in the Above Entitled and Numbered Matter on the 21st Day of November, 1918, Before the Honorable Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana.

Appearances:

Judge R. H. Marr, representing petitioner.
J. Zack Spearing, Esq., representing defendant.

180 Offer.

Judge Marr: I offer all the documents connected with the affidavit of T. F. Carlisle, all certified copies of the proceedings held in the Court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached. I offer in evidence also the testimony taken before Sir John Dickinson, Knight, in London, and the evidence in Glasgow before Alexander Stuart Duff Thomson.

Judge Marr: Then of course I presume the admission that Mr. Collins is the person described in the affidavit.

Mr. Spearing: Yes.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates, or copies that have been offered in evidence, on the ground that they do not relate to, and do not show, a charge against the accused for an offence covered by any treaty between the Government of Great Britain and the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditible, and the papers offered in evidence relate to an offence entirely separate, different and distinct from the offence charged in the affidavit filed in this Court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

181 Objection.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objection: First, that the certificates are not in proper form and that the certificate of A. H. S. Aston, Chief Presidency Magistrate, of Bombay, dated December 1st, 1917, refers to typed matter contained in the foregoing 17 pages of paper, whereas, in

truth and in fact, there are not 17 pages, and he does not refer to the papers which follow the certificate.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: I object to any of the other papers and documents, because the papers from India do not contain any warrant of arrest, and on the further ground that such papers as are further offered relate to the charge of cheating, whereas the affidavit filed in this court by the Honorable T. E. Carlisle, British Consul General at New Orleans, refers to the charge of obtaining valuable property or goods under false pretences; that the charge of cheating is not extraditible under the treaty between the Government of Great Britain and the Government of the United States.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

182 Objection.

Mr. Spearing: I object to the affidavits taken in Glasgow and London, being the evidence of John Richard Campbell Howie, Edward Curtice and others, James Paterson, Hugh Allan and A. S. D. Thomson, on the ground that they were taken after the charges were made in Bombay, India, and form no part of the proceedings in Bombay, India, and that the papers were not part of the papers or documents upon which the charge against this accused was made, or on which the warrant of arrest, if any was issued, was based.

The Court: I sustain the objection.

Objection.

Mr. Spearing: I further object to the affidavit of A. H. S. Aston, dated December 1st, 1917, he being the Presidency Magistrate of Bombay, in which he states his conclusion, on the ground that it is no part of the proceedings and is not binding upon this Court.

The Court: I sustain the objection.

Mr. Spearing: I now offer Charles Glen Collins as a witness.

The Court: There is a little difference in these affidavits, in both of these affidavits there is some mention that Collins made some arrangement of credit. I will let him explain that, if he wants to.

183 CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. Colonel Collins, we are now on the charges of Ali Raza, of Bombay, India. Mr. Ali Raza, in his examination in chief before

Mr. Aston, Chief Presidency Magistrate, in Bombay, states that he knew a Mr. Dady, and that he, Ali Raza, went out to see you at Malabar Hill.

A. That is correct.

Q. Do you remember the circumstances?

A. Yes sir; quite well.

Q. Among other things, he says he saw you and Mrs. Olga Olsan, and he took pearls with him.

A. We bought a pearl necklace and a single pearl from him, and paid him £3000 in cash and gave him notes for the balance.

Q. He refers to a conversation with reference to giving credit.

A. Yes sir.

Q. What was that conversation?

A. Well, I told him, as I told all those parties whom I saw, that I had been commanding the Howe Battalion and that I was on sick leave——

Q. I understand the Judge does not want you to testify to anything of that kind.

The Court: I don't object.

A. I mean it was on those points that he gave me credit.

Q. You say you told him you had been a colonel in the
184 Howe Battalion?

A. Yes sir, and that I was on sick leave, and that I was a brother of the chairman of a firm of publishers and stationers in Scotland and London.

Q. What was the name of that firm?

A. William Collins and Sons, Limited.

Q. Is that a firm or a corporation?

A. A corporation.

Q. What request, if any, did you make for credit?

A. The only credit I wanted was, I said I couldn't pay more than half in cash and half in notes; was that agreeable to him?

Q. Did that refer to the transaction of the pearl necklace as well as to the pearl that is referred to in these affidavits?

A. It took place simultaneously, took place at the same table, in the same room.

Q. Who purchased the pearl necklace?

A. You see, I was acting——

The Court: There is nothing about a pearl necklace in this case, is there; it is only a pearl button, is it not?

Mr. Spearing: No sir; but that I think is necessary in explaining the credit portion of it, because, as the witness has just stated, the two transactions were simultaneous and at the same table.

Q. Who purchased the pearl necklace?

A. I arranged all of these purchases for these ladies.

Q. Who was with you at that time?

185 A. All the same party; Mrs. Olsan, Mrs. Muntz and myself, and numerous other people.

Q. Who got the pearl necklace?

A. Mrs. Olsan.

Q. And you got the single pearl?
A. I didn't get it; Mrs. Olsan, she wore it, she had it mounted.
Q. You gave Ali Raza a check or draft on Curtice & Co.?
A. £1,700, and, to the best of my recollection, a check on the London, County and Westminster Bank for £3,150.
Q. Was that on account of the whole transaction?
A. Yes sir; I will say, a note of Mrs. Olsan on her—I can't say if that was or was not made on her father's firm of bankers in London, or on the same London, County & Wesminster Bank.
Q. Was there a lump sum agreed upon for all of the jewelry purchased at that time?
A. Absolutely.
Q. What was said with reference to the time of the presentation of the draft or check or note?
A. I explained to them my oil deal. I showed them the film of the oil in Houston, and they agreed to wait until we got our money from the oil deal.
Q. Did you explain that situation to them?
A. I explained it at very great length, on very many occasions.

By the Court:

Q. That was with regard to the notes?
186 A. That was about the note; I couldn't pay them the whole sum in cash.
Q. There was no agreement about the checks you gave?
A. The time I gave those——
Q. You drew a check on a certain designated firm. At that time did you have any money on deposit with that firm?
A. No, sir.
Q. Did they agree at that time to pay your checks?
A. They always did so in the past.
Q. Did they make any agreement with regard to these checks?
A. No sir; I explained I didn't have the money at that time.

By Mr. Spearing:

Q. This explanation you made to them, did that refer only to the note that was given, or did it refer to both the notes and the draft on Curtice & Co.
A. It had reference to everything.
Q. What was the understanding or agreement between you and this party with reference to the time of the presentation of the draft on Curtice?
A. Well, it is called a check, of course, it is a draft like the others. I told them I received my money by a certain date in April, April 10, and I arranged all these drafts would come at that time in London, about a fortnight after, and I arranged for the money by cable in Shanghai to meet these drafts when they become due.
Q. Did you get the jewelry or the pearls before or after that understanding was made?
187 A. Afterwards.

Cross-examination.

By Judge Marr:

Q. What business is E. Curtis engaged in in Clargis Street, London?

A. Mr. Curtice is the owner of a number of hotels and boarding houses. He is a financial man in this degree. He was associated with me many times in the past in business deals.

Q. He is not in the banking business at all?

A. He never has been.

Q. You didn't notify Curtice in London that you had any intention to draw on his for that amount?

A. I wrote him at once from India; sent him some money.

Q. And before you got any answer from him authorizing you to draw any drafts——

A. I often drew drafts on him for the last twelve years.

Q. You had no authorization from him to draw this special draft of £1,700? had you?

A. There was no need for a special authorization for drawing drafts; I always had done so.

Q. At the time you drew this draft, I understand you had no funds whatever in his hands for collection?

A. When you say that, there is information in the District Attorney's office, among the papers seized, showing how much money he had of mine, acknowledging receipt or dispatch of the money to Curtice.

Q. The evidence which purports to have been taken in London of Edward Curtice says: "I have had no communication whatever with Collins in regard to the drafts for £5,000 or £1,700."

188

Objection.

Mr. Spearing: I think it is necessary for me to make formal objection to this testimony on the ground of irrelevancy.

The Court: I sustain the objection.

Q. But you do admit that you had no formal authorization from Curtice & Co. for drawing a draft on them?

A. I never have had.

Q. You also admit that you had no money in their hands at the time this draft was drawn?

A. If you send up to the District Attorney's office, you will find among the papers——

By the Court:

Q. Just answer the question.

A. I don't know until I see the dates. In my opinion, I had.

Q. You never paid these drafts?

A. No sir; I have not had much of a chance.

Q. You never remitted anything to Curtice & Co. to take up these special drafts?

A. No sir; I have not had enough money to do that.

Q. Did you tell these people that you were a member of the corporation of William Collins & Sons?

A. No sir.

By Judge Marr:

Q. Your statement is that these people extended credit to
189 you other than that of those drafts. What did you say to them that would lead them to believe you were capable of paying that amount of money?

A. Because I paid them £3,000 in cash, $15,000 in cash.

Q. Didn't you draw a draft for £5,000 about that same time on Curtice & Co.?

A. Yes sir; that pearl necklace cost £4,000.

Q. And that also was paid?

A. Yes sir.

Q. So that you drew drafts aggregating £6,700 on a firm that you had absolutely no money with, and from whom you had no written authority to draw drafts on?

A. Well, I always drew drafts on them, they had been met, in the past.

Q. But you had no authority from them to draw any drafts upon them; they didn't tell you "You may draw on us up to the extent of £6,700 from India and we will pay those drafts"?

A. Not until he received my moneys.

Q. Didn't you tell these people that you were a member of the firm of Collins & Co.?

A. Never.

Q. You never told them anything of that sort?

A. Of that sort? I told them what I have told you.

Q. Didn't you tell them you had a large amount of railroad shares and that you were a large holder of shares of stock, and that you were amply able to meet any indebtedness you might owe?

A. I have had a lot of railroad shares.

190 Q. Did you have them at that time?

A. Mortgaged.

Q. Is it not a fact that very time when you were giving these drafts in India, that proceedings were taken against you in Great Britain as a bankrupt?

A. I don't know it and have never heard of it since. It was after I left England that you make that statement.

Q. You are, at this present moment, are you not, at this present moment, an undischarged bankrupt, by proceedings instituted against you in 1902?

A. To the best of my knowledge, no.

Q. You don't mean to testify you are a discharged bankrupt, do you?

A. I have never been put in bankruptcy in my life.

Q. You never were, prior to this suit?

A. I never have been in bankruptcy, except in the United States. There was a petition against me in 1902.

Q. How many times have you been proceeded against with regard to a discharge in bankruptcy?

A. To the best of my knowledge, only once, in 1902.

Q. You had no previous acquaintance with these people before you had these jewelry transactions, this man Ali Raza?

A. Never.

Q. You never knew him before at all?

A. No sir.

Q. And you did get, on the presentation of this draft for
191 £1,700, this pearl button——

A. And the £3,000 in cash.

Q. You didn't pay them £3,000 in cash for the pearl button?

A. No; but it was given for the two transactions.

Q. You did buy from these people a pearl button of the value of £1,700?

A. Yes, sir.

Q. And you gave in payment for that pearl button a draft drawn on these people in London for £1,700. Was not the amount of the draft equal to the purchase price of the button?

A. It was.

By the Court:

Q. I understood you to say that you told him you were an officer in the English army on sick leave?

A. Yes sir.

Q. Was that true?

A. Yes sir.

Q. Are you an officer in the English army now?

A. No sir.

Q. When was your connection with it closed?

A. January 1916, from the Admiralty, when I was discharged from the Royal Marines.

Q. What was your commission?

A. Lieutenant Colonel of the Royal Marines.

Q. When were you discharged?

A. I never was discharged; I resigned my appointment in the Royal Marines and went on to my regiment in London, in January 1916, on account of ill health.

192 Q. Was it before or after you went to India?

A. Before.

Q. So, at the time you made these purchases, you had already resigned?

A. Yes sir; but I was being employed. You see, I was used by the Department as a — and when the regiment was transferred, my health broke down, I had to resign my appointment so as to get back to my real profession in the War Office, in the army, where I had been employed before at the beginning of the war.

By Judge Marr:

Q. I show you what purports to be a passport issued at the office in London on the 8th day of January 1916.

A. Quite correct.

Q. I notice that in that passport you give your age as 36 and profession as that of banker?

A. Yes sir.

Q. You didn't give your progession as being in the army, did you?

A. I was not allowed by the Admiralty. Any officer of the army or navy crossing the North seas had to go disguised because in case of submarines capturing these neutral vessels.

Q. Where did you conduct your banking business?

A. In New York chiefly.

By the Court:

Q. You resigned your commission?

A. My appointment; you can't resign your commission in war time.

193 Q. You had resigned your appointment?

A. Under the admiralty.

Q. What was your official standing in the British Admiralty or army?

A. Commander of the Howe Battalion.

Q. Not after you had resigned your appointment?

A. No sir.

Q. What was your understanding after you had resigned your appointment?

A. I was simply sent back to my lower rank, as captain in the army, where I had been when I came to the War Office.

Q. Do you still hold your position as captain in the army?

A. No sir, I have no commission, because, at the end of six months, you are automatically dropped. I lost the appointment as colonel of the army in Canada last year. There I held the rank of colonel, general staff officer at Alcarte.

By Judge Marr:

Q. When you came to New Orleans in November 1917, you were then out of the Army?

A. Yes sir; I had a sick leave certificate from Quebec.

Q. I say, when you came to New Orleans in November 1917, had you not ceased being an officer in the British Army?

A. No sir; the letters will disprove that, the letters Mr. Spearing has from the general officer commanding in Canada, from the Adjutant General of the Canadian forces, dated October 17, that will disprove that.

194 Q. In October 1917?

A. Yes sir; that is three weeks before I came here.

Q. Three weeks before you came here, you were no longer in the army?

A. No; I went before the medical board in Quebec, I think it was the 1st of October, that is the date of the certificate, and they wouldn't let me go back in active service for six months.

Q. You came to New Orleans in November 1917?

A. Yes sir.

Q. Hadn't your connection with the British Army ceased when you came to New Orleans?

A. No; the doctors would pass me as *g*it now.

Q. I want an answer, yes or no; isn't it a fact when you came to New Orleans in 1917, your connection with the British army had come to an end.

A. No sir.

Q. What was your rank in the British Army at that time?

A. Lieutenant Colonel.

Q. So, when you presented yourself at the British Consulate here in November 1917, you were still a colonel in the British Army?

A. Yes sir; on sick leave.

Q. On six months' sick leave?

A. Yes sir; from the medical board at Quebec.

By Mr. Spearing:

Q. Will you please explain in detail how it was that when you got that passport about which you were asked, you did not give your rank either in the army or in the navy?

195 A. I applied for permission from the admiralty to go to New York to recover my health, after I was discharged as semi-fit by the medical officers of the Royal Navy Hospital at Plymouth. They sent for me and told me I could leave for three months, but I must not, in crossing the North Sea, take any papers of any kind at all with me, in case of capture by German submarines. That rule applied to all naval officers crossing the North Sea at that time. For that reason, they gave me this passport, and they made it out to me as a banker, because I told them that was my profession before the war.

Q. You did go to New York?

A. Yes sir; and then I was used immediately afterwards in carrying dispatches for the British Embassy from Petrograd to Vladivostok. That was what took me out to the Far East.

Q. That was after you got your passport?

A. Yes sir.

Q. Did you actually carry those dispatches?

A. Yes sir.

Q. You have a receipt from the British Embassy at Tokio for them?

A. Yes sir.

Q. That was one of the motives you had in going to the Far East?

A. Yes sir.

196 Q. Will you explain just your connection, either by blood or in a business way, with the corporation of William Collins & Sons, Limited. First, is that a family business?

A. That is a family business. My great-grandfather founded it and my brother is the present chairman.

Q. Did your father have any connection with it?

A. He was a director and shareholder.

Q. Did he ever have any stock in it?

A. Yes sir, and he left it in trust for his children, the same as my grandfather, Sir William Collins, he left it to my brothers and my sister and myself, a great many shares, all in trust.

Q. What has become of your interest in that concern?

A. The banks in Glasgow have loaned *sum* large sums against my shares. The firm has been obliged to reduce the dividends during the war, and at the present time I am receiving no income from my shares held by the trustees.

Q. Did you ever receive any dividends from William Collins and Sons?

A. Of course.

Q. Up to what time?

A. The trustees have been paying me moneys continuously from 1904 to 1914, when I went back to the War Office and rejoined in August.

Q. So far as your military record is concerned, I understand that before the present war broke out, you were connected with the army?

A. An officer for eight years in the Cameron Highlanders. I resigned my place in 1904, with the rank of captain.

197 Q. When the present war broke out, what part of the service did you go into?

A. I reported in the War Office, and was employed in the War Office for about thirty days with the rank of captain. I was then transferred to the Admiralty with the rank of commander, as second in command of one of the regiments of the Royal Naval Division, and later I was promoted, I was transferred from the Royal Navy to the Howe Battalion, with the rank of Lieutenant Colonel.

Q. And you served in that capacity

A. Until June 1916, or over a year and a half, I was in the Howe Battalion.

Q. And you have not been in actual service since June 1916?

A. Not in the field, but in Canada; I was carrying these dispatches.

Q. When you came to this country, you went to Canada?

A. I reported myself to the military attaches, and shortly after I was instructed to go to Quebec and to report for duty there as instructor, as military instructor.

Q. As a matter of fact, did you report for duty?

A. Yes, sir.

Q. In what capacity and at what place?

A. Lieutenant Colonel.

Q. And at what place?

A. At Alcarte Camp, Alcarte, Quebec.

Q. How long did you serve there?

A. Three months.

198 Mr. Spearing: Your Honor, I would like to offer the testimony of Mr. William H. Smith, as I did in the other case.

The Court: I will hold that the testimony of Mr. Smith, which I understand can only corroborate the Colonel as to his oil transactions in the United States, from which he expected to derive funds to pay for these jewels that he purchased, is irrelevant and inadmissible, just the same as the Colonel's testimony on that line, I have permitted the defendant to testify in order that he might explain, if he so desired, the ambiguous statement in the affidavits on which the requisition issued, that there had been a discussion about credit when the jewels were bought.

Mr. Spearing: I now offer Colonel Collins as a witness to prove the facts which it was stated could be proved by him in the former proceedings consolidated in 15,927, and also offer Mr. William H. Smith as a witness to substantiate Colonel Collins, as stated in that statement of facts.

Offer.

Mr. Spearing: I also offer all of the documents and papers which were offered in the said proceedings 15,927, concerning the other affidavits against this same accused.

The Court: I exclude the testimony.

Mr. Spearing: To all of which I except and make this note in lieu of a formal bill of exceptions.

199 Mr. Spearing: I offer the transcript of the record in the proceedings 15,927, to form part of this purpose for such purpose as it may serve.

The Court: I will consolidate this case with the other two.

The Court: It is quite evident that the defendant purchased the pearl stud, or was instrumental in its purchase, for £1700, and that he gave in payment of it, a check or draft on a firm in London with whom he had no funds deposited, and against whom he was not specially authorized to draw the check. This makes out a prima facie case of obtaining goods by false pretences, whether he subsequently intended to pay for the goods in some other way or not, and the matter is one that should come before the Indian courts for trial on the merits. Therefore I will hold him for requisition from the Secretary of State.

200 *Motion of Charles Glen Collins to Dismiss.*

Filed Nov. 21, 1918.

U. S. District Court, Eastern District of Louisiana, New Orleans Division.

No. 15936.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try Appearer or to hear and pass upon the questions raised by the affidavits or the rights of this Appearer on the grounds and for the reasons following, to wit:

Because the affidavit of Thomas F. Carlisle, British Consul General is not such as is required by law, does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of the Appearer thereunder for the reason that

The said affidavit does not charge this Appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this Appearer may be extradited.

Wherefore, this Appearer objects to and protests against this Honorable Court hearing any evidence, either oral or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this Appearer without day.

(Signed) CHARLES G. COLLINS.

(Signed) J. ZACH SPEARING, *Atty.*

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing
201 petition are true and correct.

(Signed) CHARLES G. COLLINS.

Sworn to and subscribed before me this 21st day of November 1918 at the City of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. ZACH SPEARING,
Not. Pub.

202 *Order of Commitment.*

Filed Oct. 30, 1918.

United States District Court, Eastern District of Louisiana.

Nos. 15927 & 15928 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

These causes, as consolidated, came on this day to be further heard upon requisition of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions—counsel for the respective parties being present, and the defendant, Charles Glen Collins, being present and represented by counsel;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the Premises, until the further orders of the Court.

October 30th, 1918.

(Signed) RUFUS E. FOSTER,
Judge of the United States District Court
for the Eastern District of Louisiana.

203 *Commitment.*

Issued October 30, 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of

you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody — said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court.

Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 30th day of October in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] (Signed) RUFUS E. FOSTER,
Judge of the United States District Court
for the Eastern District of Louisiana.

Marshal's Return on Commitment.

Filed November 19, 1918.

Received by U. S. Marshal, New Orleans, La., October 31st, 1918, and on the same day month and year, I delivered the body of the within named Chas. Glen Collins into the custody of the keeper of the house of Detention, New Orleans, La.

FRANK M. MILLER,
U. S. Marshal,
(Signed) By SAM W. TAYLOR, *Deputy.*

[Endorsed:] U. S. District Court. Nos. 15,927 & 15,928 (Consolidated). In the Matter of — Charles Glen Collins. Commitment.

204 *Order of Commitment.*

Filed Nov. 21, 1918.

United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

This cause came on this day to be heard upon requisition of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being delivered

up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions;

Present: Robert H. Marr, Esq., attorney for Tom F. Carlisle, British Consul General at the City of New Orleans, Complainant;

" J. Zach Spearing, Esq., attorney for the defendant, Charles Glen Collins, and said defendant, Charles Glen Collins, in person;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the premises, until the further orders of the Court.

It is further ordered by the Court that this cause be consolidated with causes Nos. 15,927 and 15,928 of the docket of
205 this Court, entitled "In the matter of extradition proceedings versus Charles Glen Collins."

(Signed) RUFUS E. FOSTER,
Judge of the United States District Court
for the Eastern District of Louisiana.

New Orleans, La., November 21st, 1918.

206 *Commitment.*

Issued November 21st., 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody in said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court. Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 21st day of November in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] (Signed) RUFUS E. FOSTER,
Judge of the United States District Court
for the Eastern District of Louisiana.

Marshal's Return on Commitment.

Filed November 27, 1918.

Received by U. S. Marshal, New Orleans, La., November 22nd, 1918. Having previously arrested the within named Charles Glen Collins, and having him in custody I take notice of this warrant and am holding him in answer to same.

FRANK M. MILLER,
U. S. Marshal,
(Signed) By SAM W. TAYLOR,
Deputy.

[Endorsed:] U. S. District Court. No. 15,936. In the Matter of Extradition Proceedings vs. Charles Glen Collins. Commitment.

207 *Certificate of Judge.*

Issued November 27, 1918.

THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

United States District Court, Eastern District of Louisiana.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of — CHARLES GLEN COLLINS.

I, Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, being duly authorized to issue warrants for the extradition of fugitives from justice of foreign governments, do hereby certify that, pursuant to complaints of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, duly made oath, charging Charles Glen Collins with having committed the crime of obtaining property by false pretenses from Po-

hoomul Bros., Ganeshi, Lall & Sons and Mahomed Alli Zaimal Ali Raza, within the jurisdiction and government of British India, and with being a fugitive from justice of said country, I issued my warrants for the arrest of the said Charles Glen Collins, and by virtue thereof he was by the Marshal of the United States for said District arrested and brought before me for examination and hearing upon said charges, and that said examinations and hearings were held on the 30th day of October, A. D. 1918, and on the 21st day of November, A. D. 1918, Robert H. Marr, Esq., appearing as counsel for the British Government, and J. Zach Spearing, Esq., appearing as counsel for the defendant, and that I deem the evidence before me sufficient to sustain the charges under the law, and the provisions of the treaty of extradition between the government of the United States and that of the British Government, and that I have accordingly, by my warrants under my hand dated October 30th, 1918, and November 21st, 1918, committed him to the House of
208 Detention for the Parish of Orleans, State of Louisiana, to await the order of the President of the United States in the premises.

I further certify that the annexed depositions of Udharn Partabrai, Lokumull Sahijran, John Dunstan Sherstan Baker and Arthur Fuller, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and Chunilal H. Setalvad, Acting Chief Presidency Magistrate, Bombay, India, and depositions of Brijmohanlal Lalla Ramkisondas, Dattatraya Ramchandra, Arthur Fuller, Mohomedali Zaimal Ali Raza, Kaikushru Dadabhoy Rustomji Dady and John Mather Perreira, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and A. H. S. Aston, Chief Presidency Magistrate, Bombay, India, was all of the testimony considered by me on said application;

I further annex the depositions of John Richard Campbell Howie and Edward Curtice, together with certificates of Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of Metropolis (London), J. W. Holderness, Under Secretary of State for India, and Sheldon Leavitt Crosby, Secretary of Embassy of United States, and deposition of James Paterson and Hugh Allan, together with certificates of J. W. Holderness, Under Secretary of the State of India, Sheldon Leavitt Crosby, Secretary to Embassy of United States, John Lamb, Assistant Under Secretary for Scotland, and A. Hirtzel, Assistant Under Secretary of State for India, which on objections of counsel for said Charles Glen Collins, I excluded.

I further annex a statement of counsel for Charles Glen Collins of certain facts he proposed to show by said Collins in his own behalf and by Wm. H. Smith, in behalf of said Collins (see accompanying record of proceedings in Court on October 30th, 1918, and November 21st, 1918), which evidence I considered to be matters of de-
209 fence before the India Court and not relevant or admissable before me.

Witness my hand this 27 day of November, A. D. 1918.
[SEAL.] (Signed) RUFUS E. FOSTER,
Judge of the District Court of the United States for the Eastern District of Louisiana.

210 *Judgment.*

Filed Feb. 21, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

As to the commitment of relator to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus is denied.

As to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits,

And it is further ordered that, as to the said two affidavits last mentioned, this cause be and is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

Given this 21st day of February, 1919.
(Signed) W. I. GRUBB,
U. S. District Judge.

211 EXHIBIT.

Filed March 6, 1919.

Before Saml. M. Hitchcock, U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of CHARLES G. COLLINS under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

C. Olive Bayley, His Britannic Majesty's Consul General at the Port of New York, being duly sworn deposes and says upon information and belief:

First. That heretofore and on or about the 2nd day of February in the year 1917 at Bombay, British India and within the jurisdiction of His Britannic Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the year 1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about $24,330, from the firm of Pohwomul Brothers of Bombay, aforesaid, by falsely and fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwomul Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he
212 falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid.

Second. That the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States.

Third. That the crime with which the said Charles G. Collins is herein charged is an offence within the treaties between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon two messages received by cable, one from His Britannic Majesty's Secretary of State for Foreign Affairs, and one from the Governor of Bombay, which messages also state that a Warrant has been issued in Bombay for the apprehension of the said Charles G. Collins for the crime herein alleged against him.

(Signed) C. OLIVE BAYLEY.

Subscribed and sworn to before me this 5th day of November 1917.

(Signed) SAM M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

SAML. M. HITCHCOCK,
U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to Certain Treaty Stipulations Between This and Foreign Governments for the Apprehension and Delivery up to Certain Offenders.

I hereby certify the foregoing to be a true copy of the Original Complaint in the above entitled cause filed in my office this 5th day of November 1917.

[SEAL.] (Signed) SAM M. HITCHCOCK,
United States Commissioner, Southern District of New York.

A true copy.

[SEAL.] (Signed) A. H. BROWNE,
U. S. Commissioner.

213 The President of the United States of America to Any Marshal of the United States *to* the Deputies of Any Such Marshal or Either of Them:

Whereas, a complaint has been made on oath under the treaties between the United States and Great Britain, signed at Washington on the ninth day of August One thousand eight hundred and forty-two and ratifications were exchanged at London, on the thirteenth day of October in the same year, and of the conventions supplementary to the said Treaty between the same High Contracting Parties, concluded and signed at Washington July 12th, 1889 and December 13th, 1900 before me, Saml. M. Hitchcock, one of the Commissioners appointed by the District Court of the United States for the Southern District of New York and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign Governments for the apprehension and delivery up of certain offenders: that heretofore and on or about the end day of February in the year 1917 at Bombay, British India and within the jurisdiction of his Britiannic Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the — 1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about $24,330, from the firm of Pohwomull Brothers of Bombay, aforesaid, by falsely and
214 fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwull Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid; that the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States of America; that the crime with which the said Charles G. Collins is charged is an offense within the treaties between the United States and Great Britain.

Now therefore, we command you forthwith to take the said Charles G. Collins and bring him before me the said Commissioner at my office Room 314 in the Post Office Building, in the City of New York, or before the nearest Justice, Judge or Commissioner in the District in which the said Charles G. Collins is apprehended, authorized to act in proceedings for the extradition of Fugitives from the justice of foreign governments as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Charles G. Collins may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the proceedings to the secretary of State that a warrant may issue for his surrender pursuant to the said Treaties.

Witness my hand and official seal this 5th day of November in the year One thousand nine hundred and seventeen.

(Signed) SAM M. HITCHCOCK,
U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to the Certain Treaty Stipulations Between This and Foreign Government- for the Apprehension and Delivery up of Certain Offenders.

A true copy.
[SEAL.] (Signed) A. H. BROWNE,
U. S. Commissioner.

215 Received this warrant on the 12 day of November, 1917, at New Orleans and executed the same by arresting the within named Charles G. Collins by producing him before A. H. Browne, U. S. Commissioner on the 12th day of November, 1917, and have his body now in court, as within I am commanded.

FRANK M. MILLER,
U. S. Marshal, Eastern District of Louisiana.
D. A. SANDERS, *Deputy.*

12th day of November, 1917.

216 *Petition & Order for Appeal.*

Filed March 6, 1919.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents—

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 21st day of February 1919 and that petitioner is aggrieved thereby and desires to take an appeal to the Honorable the Supreme Court of the United States with supersedeas; that petitioner has prepared and files herewith his assignment of error and is ready and prepared to furnish a bond with good and solvent surety in such amount as the Court may order conditioned

as the law directs, for the payment of damages and costs of appeal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from the judgment rendered and signed in these proceedings on the 21st day of February 1919 returnable to the Honorable the Supreme Court of the United States within the time and in the manner pointed out by law upon petitioner furnishing a bond for such amount as may be ordered by this Court conditioned as the law directs and for
217 the payment of damages and *and* costs of appeal or any other penalty that may be inflicted or named; and that citation of appeal issue.

(Signed) J. ZACH SPEARING, *Atty.*

Order.

The above and foregoing petition of Charles Glen Collins praying that he be allowed to appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 and that a certified copy of the transcript of the record upon the said order and decree be transmitted to the Supreme Court of the United States, and the Court being of the opinion that the said Charles Glen Collins is entitled to the appeal as prayed for by him

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 be and the same is hereby allowed and that a certified transcript of the record of all the proceedings herein and of the returns and pleadings in this case duly authenticated be forthwith transmitted to the Supreme Court of the United States.

It is further ordered, that the bond of appeal conditioned as the law directs and for the payment of damages and costs of appeal, or any other penalty that may be inflicted or named, be and the same is hereby fixed at the sum of Five Hundred & 00/100 ($500.00) Dollars and that a stay of procedure upon the said judgment and decree appealed from be and the same is hereby granted.

This 3rd day of March, 1919.

(Signed) W. I. GRUBB,
United States District Judge.

218 *Assignment of Errors.*

Filed March 6, 1919.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles Glen Collins, petitioner herein by J. Zach. Spearing, his Attorney, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein:

1st. The Court erred in dismissing the writ of habeas corpus as to the charge by Mahomed Alli Zaimal Ali Raza sued out by petitioner herein.

2nd. The Court erred in remanding petitioner to the House of Detention to await further proceedings on the two affidavits of Pohoomull Bros., and of Ganeshi Lall & Sons notwithstanding that according to the judgment appealed from the writ- of habeas corpus in those two cases were granted.

3rd. The court erred in denying the writ of habeas corpus as to one affidavit and granting the writ of habeas corpus in part as to the other affidavits, but the Court should have granted the writ of habeas corpus in its entirety and should have ordered petitioner discharged from custody.

219 4th. The Court erred in holding that petitioner was lawfully held in custody by the Marshall of the United States for the Eastern District of Louisiana to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

5th. The Court erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshall of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

6th. The Court erred in holding that the informations filed against petitioner before the Esplanade Police Court of Bombay, British India charging petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code were sufficient under the extradition treaties between the Government of the United States and the Government of Great Britain proclaimed November 10th, 1842 and the supplementary extradition treaty be-

tween the same Countries proclaimed April 22nd, 1901, or any other convention or treaty in force between those two Countries, to arrest, hold or detain petitioner, or to justify his extradition because the offense of cheating is not one of the offenses for which a person, and particularly for which petitioner, could be extradited.

7th. The Court erred in not holding that petitioner was denied due process of law because Hon. Rufus E. Foster, United States District Judge sitting as Extradition Commissioner, refused petitioner the right and opportunity accorded him by the laws of and practice in the State of Louisiana to testify or to make a voluntary declaration in his own behalf and also of the refusal by the said Extra-
220 dition Commissioner of the right and opportunity accorded him by the said laws of and practice in the State of Louisiana to have other witnesses than himself examined in his own behalf and the like refusal of the right and opportunity to produce and file in evidence documentary evidence in his behalf.

8th. The Court erred in not holding that petitioner was denied by Hon. Rufus E. Foster, the right granted to and possessed by him under the tenth article of the treaty between the United States and the Kingdom of Great Britain proclaimed November 10th 1842 to the protection of the laws of and practice in the State of Louisiana in which petitioner was arrested and according to the laws of and practice in which said State petitioner had and has the right to testify and to make a voluntary declaration in his own behalf and to have witnesses examined and to introduce and to have admitted documentary evidence in his own behalf before a Committing Judge or Magistrate.

9th. The Court erred in not holding that petitioner was denied by the said Hon. Rufus E. Foster the protection granted to and possessed by him under the fifth amendment of the Constitution of the United States of America in that he had been and is being deprived of his liberty without due process of law because under the treaties and conventions between the Kingdom of Great Britain and the United States of America it is expressly provided that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would
221 justify his apprehension and commitment for trial, if the crime or offense had there been committed," and that according to the laws of and practice in the State of Louisiana in which State petitioner was arrested he was entitled to testify in his own behalf and was also entitled to have witnesses examined in his own behalf before the Committing Judge or Magistrate and likewise to have introduced and admitted documentary evidence in his own behalf and that each and all of his rights were denied to your petitioner by the said Hon. Rufus E. Foster.

10. The Court erred in not holding that no legal proof was submitted to or produced before the Hon. Rufus E. Foster of the commission by petitioner of the crime or offense mentioned in the complaints of Thomas F. Carlisle, British Consul General at the City of New Orleans, or of the crime or offense mentioned in the authenti-

cating certificates attached to the documents which were admitted in evidence or mentioned in the information or charges filed before the Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either of said crimes or offenses, or of any other crime or offense.

11th. The Court erred in not holding that no legal proof was submitted to or produced before Hon. Rufus E. Foster on which reasonable ground for a belief that petitioner had committed the crime or offense mentioned in the complaints of Hon. Thomas F. Carlisle, British Consul General at the City of New Orleans or mentioned in the authenticating certificates attached to the documents offered in evidence or mentioned in the informations or charges filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said
222 Police Court, or of either or any of said crimes or offenses, or any other crime or offense could be based.

12th. The Court erred in not holding that none of the evidence, papers or exhibits which were submitted to the Hon. Rufus E. Foster and by him admitted in evidence over the objection and protest of petitioner were authenticated in accordance with the provisions of the statutes in such cases made and provided so as to entitle them to be received in evidence in the proceedings before the said Hon. Rufus E. Foster.

13th. The Court erred in not holding that the transactions referred to in the depositions and documents which were admitted in evidence over the objection and protest of petitioner are not crimes nor offenses under the laws of the State of Louisiana in which your petitioner was arrested, nor under the laws of British India where it is alleged the said transactions took place, but the Court should have held that the said transactions constituted and were mere commercial transactions in which credit was freely and voluntarily extended.

14th. The Court erred in not holding that even if the said transactions are criminal according to the laws of British India, they do not constitute an offense which, under the treaties or conventions in force between the United States and the Kingdom of Great Britain, are extraditable or for which extradition can be had.

15th. The Court erred in not holding that there is a fatal variance in each of the three sets of documents from Bombay, India, offered, introduced and admitted in evidence over protest by petitioner
223 between the charge brought against petitioner in the Esplanade Police Court of Bombay, India which is the offense of cheating under Section 420 of the Penal Code of India and the offense mentioned in the authenticating certificates of the Secretary for the Indian Government and the Consul General of the United States at Calcutta, India which is the offense of obtaining valuable property by false pretenses, which said two offenses are not the same but are different in nature and character in this that the offense of cheating under Section 420 of the Penal Code of India which is not extraditable under the treaties and conventions existing between the United States and the Kingdom of Great Britain is the failure to perform a promise of future payment where the intent not to perform is

proved to have existed at the time of making of the promise and the gist of the offense of obtaining valuable property by false pretenses which is extraditable is, according to the laws enforced in the State of Louisiana, a false representation concerning a past or present fact.

16th. The Court erred in not holding that petitioner was being deprived of his liberty without due process of law and in violation of the provisions of the treaties and conventions between the United States and the Kingdom of Great Britain and particularly in violation of the provisions of the tenth article of the treaty between the said two Countries dated August 9th 1842 and proclaimed November 10th 1842 and in violation of the fifth amendment to the Constitution of the United States of America and in violation of the laws of Louisiana.

224 And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 21st day of February 1919 for the errors aforesaid and for other errors in the record and proceedings herein *made by* reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of habeas corpus issued in these proceedings and discharging petitioner from the custody of the Marshall of the United States of the Eastern District of Louisiana and restoring petitioner to his liberty.

(Signed) J. ZACH SPEARING,
Atty. for Charles Glen Collins.

Presented this 3rd day of March 1919.
(Signed) W. I. GRUBB,
District Judge.

225 *Bond.*

Filed March 6, 1919.

Know all men by these presents, That we, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Frank M. Miller, U. S. Marshal and Harry J. Carter, Clerk of the U. S. District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred & 00/100 ($500.00) dollars to be paid to the said parties or any of them, their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this Sixth day of March in the year of our Lord, one thousand nine hundred and Nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, entitled In the matter of the Application of Charles Glen Collins for Writs of Habeas Corpus and Certiorari a

judgment was rendered against the said Charles Glen Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United States Supreme Court, to be holden at Washington, District of Columbia, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CHARLES GLEN COLLINS. [SEAL.]
" UNITED STATES FIDELITY & GUARANTY CO.,
By T. B. NORTON, [SEAL.]
Attorney in Fact.

Sealed and delivered in presence of—
(Signed) J. ZACH SPEARING.
" SYLVESTER TITUS.

Approved by—
(Signed) W. I. GRUBB,
District Judge.

[Endorsed:] U. S. District Court, Eastern District of Louisiana. No. 15,959. In the Matter of the Application of Charles Glen Collins. Bond for Writs of Habeas Corpus, etc.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally Appeared, Mr. Thomas B. Norton, Agt. U. S. Fidelity & Guaranty Company, who being duly sworn, deposes and says that said company is the surety on the within bond, that said company is authorized to do business in the State of Louisiana and is worth the full sum of five hundred & 00/100 ($500.00) Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) T. B. NORTON,
Agt. & Atty. in Fact.

Subscribed and sworn before me this 6th day of March 1919.

[SEAL.] (Signed) J. ZACH SPEARING,
Not. Pub.

226 *Præcipe.*

Filed March 12, 1919.

In the United States District Court for the Eastern District of Louisiana.

No. 15959.

In the Matter of CHARLES GLEN COLLINS Praying for Writs of Habeas Corpus & Certiorari.

The Clerk of the United States District Court for the Eastern District of Louisiana is hereby directed in making up the Transcript for the Supreme Court of the United States to omit therefrom the following, to wit:

The affidavits of James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Courtice which were taken respectively in Glasgow and London the said affidavits having been excluded by the ruling of the Hon. Rufus E. Foster, Judge of the United States District Court.

New Orleans, La., March 12th, 1919.

(Signed) J. ZACH SPEARING,
Atty. for Charles Glen Collins.

227 *Petition of Tom F. Carlisle, British Consul General, and Order for Appeal.*

Filed March 28th, 1919.

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the Honorable the United States District Court for the Eastern District of Louisiana:

The petition of Tom F. Carlisle, British Consul General, respectfully represents:

That there is error to the prejudice of petitioner in the judgment herein rendered and signed on February 21st, 1919, and that your Petitioner as representative of said British Government is aggrieved thereby, and desires to take an appeal to the Honorable, the Supreme Court of the United States with supersedeas.

That Petitioner has prepared and files herewith his assignment of errors, and is ready and prepared to furnish bond with good and solvent surety, if, in the opinion of this Honorable Court, it is necessary that a bond be given, in such sum as this Court may order, conditioned as the law directs.

Wherefore, Petitioner prays that he be granted an appeal from said judgment, returnable to the Supreme Court of the United States, as by law provided, upon Petitioner furnishing a bond for such amount as this Court may order, conditioned as by law directed, and that citation of appeal herein issue.

(Sig.) ROBERT H. MARR,
For Petitioner.

Order.

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree herein rendered and signed February 21st, 1919, be, and the same is hereby allowed
228 Petitioner, returnable to the Honorable, the Supreme Court of the United States April 7th, 1919.

It is further ordered that bond of appeal, conditioned as by law directed, be and the same is hereby fixed at the sum of Five Hundred ($500.00/100), and that a stay of proceedings upon said judgment and decree appealed from be, and the same is hereby granted.

(Signed) W. I. GRUBB,
United States District Judge.

March 28, 1919.

229 *Assignment of Errors by Tom F. Carlisle, British Consul General.*

Filed March 28, 1919.

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Tom F. Carlisle, British Consul-General, Petitioner, through his Counsel, Robert H. Marr, who makes and files the following assignment of errors, which he alleges occurred upon the hearing herein and the entry of the judgment in the proceedings from which the said Tom F. Carlisle, British Consul-General, has taken an appeal, and upon which assignment of errors he will rely in the prosecution of this appeal.

That it was error as to the commitment based on the charge of obtaining property by false pretences from Pohoomul Brothers, and on the charge of obtaining property by false pretences from Ganeshi Lall & Sons, to grant writs of habeas corpus and to remand relator to the House of Detention to await further proceedings, and the further order that the cause be remanded to the Honorable Rufus E. Foster to the end that relator be given an opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

That Petitioner specially assigns as error the granting of the writs of habeas corpus as hereinabove recited.

(Sig.) ROBERT H. MARR,
For Petitioner.

Presented this 28th day of March, 1919.

(Signed) W. I. GRUBB,
District Judge.

230 *Bond of Appeal.*

Filed March 28, 1919.

Know all men by these presents, That we, Tom F. Carlisle, British Consul General at New Orleans, La., as principal, and Robert H. Marr, of New Orleans, La., as surety, are held and firmly bound unto Charles Glen Collins in the full and just sum of Five Hundred dollars to be paid to the said Charles Glen Collins his certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of March, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between United States on the relation of Charles Glen Collins vs. Frank M. Miller, United States Marshal, praying for a writ of Habeas Corpus in the suit No. 15,959 of the docket of said Court, a Judgment was rendered against the said Tom F. Carlisle British Consul General and the said Tom F. Carlisle, British Consul General having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Charles Glen Collins citing and admonishing him to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Tom F. Carlisle, British Consul General shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) TOM F. CARLISLE, [SEAL.]
British Consul General,
By His Atty., ROBERT H. MARR. [SEAL.]
ROBERT H. MARR. [SEAL.]

Sealed and delivered in presence of—

——— ———.

——— ———.

Approved by—
(Signed) W. I. GRUBB,
U. S. District Judge.

[Endorsed:] U. S. District Court, Eastern District of Louisiana. No. 15,959. United States ex rel. Charles Glen Collins. Bond. Frank M. Miller, U. S. Marshal.

231 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 231 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceedings in the case of "United States Ex Rel. Charles Glen Collins, versus Frank M. Miller, United States Marshal," No. 15,959, of the Docket of said Court (made in accordance with the præcipe for transcript copied at page 226 of said transcript) in the matter of the said appeal taken by the Relator Charles Glen Collins, and also a true and perfect copy of the Petition and Order for Appeal, Assignment of Errors and Bond of Appeal taken by Tom F. Carlisle, British Consul General.

Witness my hand, and the seal of said Court, at the City of New Orleans, Louisiana, this 29th day of March, A. D., 1919.

[Seal District Court of the United States, Eastern District of Louisiana, New Orleans Division.]

H. J. CARTER,
Clerk.

232 Issued for J. Zach. Spearing, Atty. for Relator.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein United States ex rel. Charles Glen Collins, is Appellant, and Frank M. Miller, United States Marshal, is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator, and Frank M. Miller, United States Marshal, is Defendant, No. 15,959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause,

if any there be, why the judgment rendered against the said Relator, Charles Glen Collins, as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William I. Grubb, Judge of the United States District Court, at New Orleans, La., this 8th day of March in the year of our Lord one thousand nine hundred and nineteen.

(Signed) WM. I. GRUBB,
Judge *District Judge.*

Clerk's Office.

A true copy.

H. J. CARTER, *Clerk.*

New Orleans, La., March 10, 1919.

Received by U. S. Marshal, New Orleans, La., March 10th, 1919, and on the same day month and year I served the original of which this is a certified copy on Frank M. Miller, U. S. Marshal, by handing same to him in person at New Orleans, La.

FRANK M. MILLER,
U. S. Marshal,
By SAM W. TAYLOR, *Deputy.*

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. N. No. 15,959. United States ex rel. Charles Glen Collins. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 28, 1919. Hy. J. Loisil, Dep. Clerk.

233 Issued for Robert H. Marr, Atty.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Charles Glen Collins, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Tom F. Carlisle, British Consul General, is Appellant, and United States, ex rel. Charles Glen Collins is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator and Frank M. Miller, United States Marshal, is Defendant No. 15,959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause, if

any there be, why the judgment rendered against the said Tom F. Carlisle, British Consul General as in said Petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William I. Grubb, Judge of the United States District Court, at New Orleans, La., this 28th day of March in the year of our Lord one thousand nine hundred and nineteen.

(Signed) W. I. GRUBB, *Judge.*

Clerk's Office.

A true copy.

H. J. CARTER, *Clerk.*

New Orleans, La., March 28, 1919.

Received by U. S. Marshal, New Orleans, La., March 29, 1919, and the same day month and year I served the original of which this is a certified copy on Charles Glen Collins by handing the same to him in person at New Orleans, Louisiana.

FRANK M. MILLER,
U. S. Marshal,
By SAM W. TAYLOR,
Deputy U. S. Marshal.

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. N. No. 15,959. United States, Ex Rel, Charles Glen Collins. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 29, 1919. E. V. Vendling, Dy. Clerk.

Endorsed on cover: File No. 27,063. E. Louisiana D. C. U. S. Term No. 977. Charles Glen Collins, appellant, vs. Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana. File No. 27,064. Term No. 978. Tom F. Carlisle, British Consul General, appellant, vs. Charles Glen Collins. Filed April 11th, 1919. File Nos. 27,063 and 27,064.

[Endorsed:] File No. 28,627. Supreme Court U. S., October Term, 1921. Term No. 672. Charles Glen Collins, Appellant, vs. Victor Loisel, U. S. Marshal etc. Stipulation and addition to record. Filed April 6, 1922.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 672.

CHARLES GLEN COLLINS,
Appellant,

VERSUS

VICTOR LOISEL, U. S. MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF ON BEHALF OF THE APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the United States District Court for the Eastern District of Louisiana filed on October 25, 1921 (Ad. Rec., p. 27), upon the petition of the appellant for *habeas corpus* and *certiorari* (Ad. Rec., p. 1).

The appellant, Lieutenant-Colonel Charles Glen Collins, is held in the custody of Victor Loisel, United States Marshal for the Eastern District of Louisiana, at the City of New Orleans, in the State of Louisiana, under an order and commitment of the Honorable Rufus E. Foster, United States

District Judge for the Eastern District of Louisiana, awaiting the action of the Honorable Secretary of State of the United States of America, as to whether the accused should be surrendered for extradition to Bombay, India, to answer three separate charges of cheating under Section 420 of the Penal Code of India preferred against him by certain merchants doing business in India. This order and commitment will be found on pages 101-103 of the Additional Record.

Col. Collins was arrested on October 16, 1918, upon the affidavit of Gerard M. Loly, British Vice-Consul, charging him with having obtained certain jewels from Pohoomul Brothers by false pretenses. This affidavit was supplemented on October 26, 1918, by the affidavit of T. F. Carlisle, British Consul General at the City of New Orleans, repeating the same charges (Ad. Rec., pp. 11-13). On October 16, 1918, a similar affidavit was filed by Vice-Consul Loly charging Colonel Collins with having obtained other jewelry from Ganeshi Lall & Company by false pretenses, and this affidavit was on October 22, 1918, supplemented by the affidavit of Consul General Carlisle (Ad. Rec., pp. 34-36). Upon these two charges Colonel Collins, on October 30, 1918, was brought for hearing before the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana, as Committing Magistrate, the two cases being numbered in that Court respectively, No. 15927 and No. 15928. The full record of these proceedings at that time before Judge Foster will be found in the Additional Record, pages 11-76. These two charges were consolidated and the order and commitment filed therein October 30, 1918, will be found on pages 100-101 of the Additional Record.

On November 8, 1918, an additional affidavit was filed by T. F. Carlisle, British Consul General, charging Colonel Collins with having obtained a pearl button, valued at £1700

from Mohamed Alli Zaimal Ali Raza by false pretenses (Ad. Rec., pp. 76-77).

This is the charge which is particularly under consideration on this appeal, and the proceedings now especially to be reviewed will be found in the Additional Record, pages 76-99.

This case was No. 15936 in the District Court of the Eastern District of Louisiana, and the hearing took place before Judge Foster as Committing Magistrate, on November 21, 1918. At the hearing, Judge Foster consolidated this case No. 15936, with the two previous cases above referred to, No. 15927 and No. 15928, the order reciting:

> "It is further ordered by the Court that this cause be consolidated with causes Nos. 15927 and 15928 of the docket of this Court, entitled 'In the matter of extradition proceedings versus Charles Glen Collins.'" (Ad. Rec., p. 102.)

Upon these *consolidated charges,* on November 21, 1918, Judge Foster committed Colonel Collins, the warrent of commitment reading as follows:

> "Commitment.
>
> (Issued November 21st, 1918.)
>
> "*United States of America,*
>
> *Eastern District of Louisiana, ss.*:
>
> "To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in said District, Greeting:
>
> "These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order ren-

dered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

"And you, the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody in said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the Court.

"Hereof fail not at your peril.

"Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, this 21st day of November, in the year of our Lord one thousand nine hundred and eighteen.

"(Seal)

"(Signed) RUFUS E. FOSTER,
"Judge of the United States District Court for the Eastern District of Louisiana."

(Ad. Rec., pp. 102-103.)

This is the Commitment upon which Colonel Collins is now held, and which is being attacked by these Habeas Corpus proceedings. The Commitment covers all three charges.

Thereafter, on November 27, 1918, Judge Foster, still acting as Committing Magistrate, certified to the State Department that he had committed Colonel Collins upon these three charges to await the order of the President of the United States in the premises (Ad. Rec., pp. 103-105).

Thereupon Colonel Collins filed the petition for writs of habeas corpus and certiorari, the beginning of which will be found in Additional Record on page 1. (As it appears from examination of this Additional Record, that in the rush of the printer in trying to get this record printed in time for this hearing, pages 3, 4, 5 and 6 were omitted from the record, we are re-printing this petition in full as an Appendix to this brief.)

The hearing of the petition on *habeas corpus* took place before the Honorable W. I. Grubb, and on February 21, 1919, Judge Grubb entered a judgment denying the writ so far as the charge of obtaining property by false pretenses from Mohamed Alli Zaimal Ali Raza was concerned, and undertook to remand Colonel Collins for further proceedings before the Committing Magistrate upon the other two charges (Ad. Rec., p. 105).

This action was based upon the ground that in the two cases remanded, no opportunity had been given Colonel Collins to produce testimony on his behalf, while Judge Grubb held that some testimony having been given in the Mohamed Alli Zaimal Ali Raza case, that sufficiently complied with the requirements of the Louisiana law.

It was from this judgment that the former appeal was taken in this case to this Court, where it was decided that this judgment of Judge Grubb's was not a final judgment, and the appeal was accordingly dismissed for want of jurisdiction.

The opinion of the Court was rendered by Mr. Justice Brandeis on March 29, 1920.

Collins vs. Miller, 252 U. S. 364.

Following the rendition of this decision, the British Consul General, without any further proceedings before Judge Grubb, or before the District Court in the *habeas corpus* pro-

ceedings, again carried Colonel Collins before Judge Foster for further hearing upon the charges in the case of Pohoomul Brothers and Ganeshi Lall & Company, and Judge Foster again undertook to commit Colonel Collins upon these two charges; and thereupon the British Consul General again applied to the Secretary of State for a warrant of surrender of Colonel Collins upon these charges. This application was resisted by Colonel Collins, and on April 20, 1921, the Secretary of State refused to issue a warrant for reasons set forth in his letter of that date to the clerk of the United States District Court for the Eastern District of Louisiana, which will be found on pages 8-10 of the New Record.

On October 24, 1921, the *habeas corpus* proceedings were again taken up before Judge Grubb, and the proceedings had at that time will be found in the New Record, pages 3-27. On October 25, 1921, Judge Grubb entered a judgment denying the application for *habeas corpus* in so far as the charge of obtaining property by false pretenses from Mohamed Alli Zaimal Ali Raza is concerned; and discharged Colonel Collins from the other two charges (New Record, pp. 27-28). It is from this judgment that this appeal is taken. The Assignment of Errors will be found in the New Record, pages 29-33.

Judge Grubb by this judgment simply remanded Colonel Collins to the custody of the Marshal under the original commitment of Judge Foster, wherein he was charged with three separate and distinct offenses.

After this judgment was entered, the British Consul General again applied to the Secretary of State for a warrant of surrender of Colonel Collins, which application had to be again opposed by Colonel Collins in a printed brief, and the Secretary of State again held that the case was not in such shape as would justify the issuance of a warrant of surrender of Colonel Collins.

Facts Prior to Arrest.

The appellant, Charles Glen Collins, prior to the World's War, was an officer in the British Army for eight years, having served with distinction in South Africa in the Boer War as captain in the Cameron Highlanders (Ad. Rec., pp. 85 and 97). At the outbreak of the World's War he again entered the army and served brilliantly through the Gallipoli Campaign as a Lieutenant-Colonel in the Royal Marines (Ad. Rec., pp. 30, 62, 63, 64). As a result of this terrible experience his health was greatly impaired and he was discharged from the Royal Marines, and went back to his regiment in London on account of ill health, and was again employed in a confidential capacity in the War Office, where his official standing was recorded as Commander of the Howe Battalion (Ad. Rec., p. 95). In the course of this employment he was assigned to duty in carrying dispatches for the British Embassy from Petrograd to Vladivostok, which was the occasion of his going to the Far East (Ad. Rec., pp. 96 and 97). Just prior to his trip to India, Colonel Collins in company with a Mrs. Muntz, whom he subsequently married, and her friend Mrs. Olsen, a very wealthy woman, made a visit to Christiania, Norway, where he and Mrs. Olsen engaged in a speculation in some steamship shares, resulting in a profit of about $150,000 and when Colonel Collins started to the Far East, these ladies accompanied him, and together they went to Japan, China and British India (Ad. Rec., pp. 61-62). While on this trip, before reaching India, the appellant and Mrs. Olsen met Mr. William H. Smith, then a resident of Massachusetts, now a resident of Missouri, and became interested with him in a speculation involving certain oil options in Texas and Mexico, and they entered into an agreement with him, in writing, on October 27, 1916 (Ad. Rec., pp. 61-63). On their arrival in India, Colonel Collins and the ladies

with him were at once beseiged by numerous merchants, including the complainant herein, and importuned to purchase jewels and other costly articles. They made a number of purchases, but while they were in the course of examining various jewels tendered to them, it became necessary for them to cable to America, $25,000 on account of their agreement with Mr. Smith. This not only considerably shortened their supply of ready cash, but, as the fact became known, seems to have given the merchants the impression that the appellant was wealthy.

We have been unable to find in either Record any evidence justifying the statement in the Brief for Appellee, page 10, *that*:

> "A review of the evidence discloses the fact that *accused started out with the settled purpose to swindle Indian jewelers to as large an extent as possible.* * * * To obtain the recognition of Europeans of standing the relations between the accused and the two ladies traveling with him must be satisfactorily explained, hence *to his English acquaintances he introduces one of the ladies as his wife, the other as his sister;* but when he wished to cheat Pohoomul Brothers out of 75,000 rupees of pearls, he has his 'fiancee' make the selection as 'a wedding present.' "

We feel confident that *the record does* show that the accused *had no purpose whatever to swindle* the Indian jewelers, and that he did not represent to any one that either of these ladies was his wife or sister. We think the facts disclosed by the record establish the exact contrary.

We further fail to find in the record any justification for the statement found on page 12 of the brief for the appellee in speaking of the accused:

> "That all his representations as to his military position * * * were all false and untrue."

The testimony of Colonel Collins in the record shows that the representations that he did make in regard to his military position were true in fact, and the testimony offered in evidence and refused to be received by Judge Foster would have fully confirmed this testimony (Ad. Rec., pp. 95, 96, 97, 98).

The merchants continuing their efforts to induce the appellant, and the ladies with him, to purchase additional jewelry, he told them he could only do so upon credit, and the complainant in this case, Mohamed Alli Zaimal Ali Raza, in his affidavit distinctly states:

> "He took the pearl from me that day. *He asked me to give that for credit* also. * * * He gave me a cheque (draft) for the pearl. *I promised not to present it for 70 days until the 5th of May*" (Ad. Rec., p. 80).

Mr. Dady, who was acting as interpreter for Ali Razi in his affidavit states in regard to this transaction:

> "At this particular time after complainant (Ali Raza) had gone down stairs *accused broached the subject of credit.* I told him I would ask the complainant and let him know. I mentioned the matter to the complainant in the motor on the way back. *Complainant asked me to make inquiries and let him know whether he was a desirable person to whom to give credit. I consulted Mr. Furdiuji. He gave me certain information*" (Ad. Rec., pp. 80-81).

Charge of Mahomed Alli Zaimal Ali Raza.

On the first day of December, 1917, a certain Mahomed Alli Zaimal Ali Raza filed in the Court of the Chief Presidency Magistrate of Bombay his deposition (in this case there was neither an information nor an indictment) (Ad. Rec., p.

79), in which he charged Col. Collins with having committed the offense of "*cheating*" under Section 420 of the Indian Penal Code, and to support said charge, stated that a certain Mr. Dady gave him certain information in January, 1917, in consequence of which he called on Col. Collins and offered to sell him some pearls; that he thinks "*there was some conversation about giving credit at the first interview*"; that after that he called again on Col. Collins, and that *Mr. Dady acted as interpreter because Raza does not speak English;* that he, Raza, "*understood that Col. Collins was a big man and very wealthy and a partner of Collins & Son*"; that Col. Collins gave witness a diary saying it was the diary of "*their office*"; that he said he had shares worth thousands of pounds; that Col. Collins took Mr. Dady aside and spoke about payment; *that witness thought* Mr. Dady "*was a big man also*"; *that witness agreed to give the pearls on credit;* that Col. Collins liked one of the pearls and said he would come back and purchase it after he had visited his Rajah friends; that on February 26th, 1917, witness went to see Col. Collins again and sold him the pearl for £1,700; that Col. Collins asked witness "*to give that for credit*"; that Col. Collins gave witness a draft for the pearl; that witness "*promised not to present it for seventy days until the 5th of May*"; that the draft was drawn on C. Curtice & Co., of London; that witness believed accused's representations that he was a partner in Wm. Collins & Son; and that the check has not been paid.

The most that can be said for this deposition is that the affiant believed the statement that Mr. Dady made to him, not under oath, as to what the accused had said to Mr. Dady. As bearing on the question of false pretenses on the part of the accused, this statement is absolutely only hearsay.

Nor does the complainant charge that these alleged misrepresentations induced him to part with the pearl stud. His statement is:

"If I had known accused was an undischarged bankrupt I would not have accepted the cheque.

"If I had known C. Curtice and Company was a boarding house and not a bank I would not have accepted the cheque" (Ad. Rec., p. 80).

There is no testimony under oath in the Record that the accused was an undischarged bankrupt, or that Col. Collins made any representations on this subject. Colonel Collins in his testimony swears that he was not an undischarged bankrupt (Ad. Rec., p. 93).

There is no evidence in the Record that Colonel Collins ever represented that Curtice & Co. was a bank, although the Record does show that he had for years been in the habit of drawing on them without notice and his drafts had been honored (Ad. Rec., p. 92).

On the same day a deposition of Kaihkurkroo Dady was filed (Ad. Rec., p. 80), in which he stated that he learned that Col. Collins wanted to buy some pearls, and got a letter of introduction to him and called to see him about Feb. 1st, 1917; that witness knew a party who had a very large stock of pearls and the next day he took this party to see Col. Collins, who introduced them to Mrs. Olsen, and that Mrs. Olsen selected a string of pearls out of a large mass shown to her; that Mrs. Olsen wanted the pearls made up into a necklace; that accused broached the subject of credit, and that witness said he would ask the complainant and let him know; that the subject of credit was mentioned to the complainant in the motor on the way back; that complainant asked the witness to make inquiries and let him know whether he was a desirable person to whom to give credit; *that witness consulted a Mr. Furdunji and got certain information;* that Col. Collins liked a button pearl shown to him by complainant

and subsequently bought it for £1,700; that Col. Collins gave witness two diaries, *"one for complainant* and one to myself"; that accused wrote in the diaries; that he said William Collins & Son was his firm; that he had a considerable number of shares, and that he was on six months' leave; *that accused gave a demand draft asking complainant to present it two months later.*

Here the witness clearly shows that in giving information to the complainant he was not acting alone on the representations of the accused, but that, at the request of the complainant, he made an entirely independent investigation of his own, and obtained information from Mr. Furdunji. This completely negatives the vague suggestion that credit was given on statements made by the accused. Neither this witness nor, as shown above, the complainant, asserts that the goods were parted with because of false pretenses on the part of the accused.

In this case there was also filed the same day a deposition of Birjmohanlal Lalla (or Birjmohan Lall) (Ad. Rec., p 81), one of the other complainants, in which he stated that he had correspondence with friends in London regarding accused and had inquiries made, and he filed as exhibits copies of a letter from Harry Morser and an alleged report from a detective, William H. Kemp.

There were also filed as part of the proceedings certain other unsigned and unsworn to, papers and communications (Ad. Rec., pp. 83, 84 and 87).

Upon this state of the record, Judge Foster excluded from consideration all the testimony offered by the appellant, stating:

> "The defendant purchased the pearl stud, or was instrumental in its purchase, for £1,700, and that he gave in payment of it, a check or draft on a firm in London

with whom he had no funds deposited, and against whom he was not specially authorized to draw the check" (Ad. Rec., p. 98).

And he ruled:

"This makes out a *prima facie* case of obtaining goods by false pretenses, whether he subsequently intended to pay for the goods in some other way or not, and the matter is one that should come before the Indian courts for trial on the merits. Therefore, I will hold him for requisition from the Secretary of State" (Ad. Rec., p. 98).

It will be noted that this action is not based on a ruling that there was a *prima facie* case established of false pretenses on the part of Colonel Collins in respect to his wealth, army standing, membership in the firm of Collins & Company, etc., which induced the complainant to part with the pearl stud. All of that is eliminated by the specific statement by the Court that he based his action upon the giving of a draft without special authority against a party with whom the drawer had no funds *at the time*, although the complainant admits he had promised not to present this draft for 70 days (Ad. Rec., p. 80).

This, we most earnestly insist, does not constitute the offense of "obtaining of money, valuable securities or other property by false pretenses," under the Treaty with Great Britain, 32 U. S. Stat. at Large, p. 1864, upon which alone the accused could be extradited.

Treaty References.

Extradition treaties between the United States and Great Britain are the following:

Treaty of August 9, 1842, Article X; 8 U. S. Statutes at Large, p. 576;

Treaty of July 12, 1889, as amended and proclaimed March 25, 1890; 26 U. S. Statutes at Large, p. 1508;

Treaty of December 13, 1900; 32 U. S. Statutes at Large, p. 1864.

ARGUMENT.

No Extraditable Offense Charged.

Colonel Collins stands charged with having committed the offense of cheating as that offense is defined and prescribed by Section 420 of the Indian Penal Code. This section of the Indian Penal Law is as follows:

> "Section 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."
>
> 1 Stokes Anglo-Indian Codes, p. 254.

This offense or crime is nowhere mentioned in either of the three treaties between this Nation and Great Britain.

The nearest approach to it appears in the Treaty of December 13th, 1900, but there is a very material difference between the crime therein named and that, with the commission of which the accused stands charged.

The Treaty of December 13th, 1900, includes among extraditable crimes that of:

> "11. Obtaining of money, valuable securities or other property by false pretenses."
>
> 32 U. S. Stat. at Large, p. 1864.

The difference between this crime and that of cheating under Section 420 of the Indian Penal Code is that proof of false representations of a state of things *past or present* is essential to a conviction under one, while all that is required under the other is proof of a promise of *future performance* which the promisor *did not intend* to perform.

The case of State of Louisiana vs. Clement Colly, 39 La. An. 841, well illustrates the difference between the American doctrine of false pretenses and the offense of "cheating" under the India Code. In that case it was held that in a prosecution for obtaining money or property by false pretenses, the indictment must contain averments that the accused made false representations of a state of things past or present, and that the indictment will not be good if the alleged false representations refer to the future only.

And again, in the same opinion the Supreme Court of Louisiana said:

> "A promise is not a pretense within the meaning of the Louisiana Statute, even when the party making the same *does not intend to keep it.*"

The Louisiana doctrine is not peculiar in this respect, nor is it limited, in its application, to that State.

It is the same doctrine that is now and has always been applied throughout the Nation.

Wharton, Am. Crim. Law, secs. 2085, 2087, 2096, 2112;

2 Bishop on Crim. Law, secs. 397, 400, 401;

Johnson vs. Stockham, 89 Md. 358 at 364.

Under the Indian Penal Code, however, it has been held:

"A. intentionally deceives Z. into a belief that A. means to repay any money that Z. may lend to him, and thereby dishonestly induces Z. to lend him money, A. not intending to repay it. A. *cheats.*"

1 Stokes Anglo-Indian Codes, p. 252 (illustration f).

And again:

"A. intentionally deceives Z. into a belief that A. means to deliver to Z. a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z. to advance money upon the faith of such delivery. A. *cheats;* but if A., at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

1 Stokes Anglo-Indian Codes, p. 252 (illustration g).

And that:

"A. receives from B. a Government promissory note, promising to return certain jewels pledged to him, but not intending to do so, and subsequently claims to re-

tain the note for another debt alleged to be due to him by B. A. *cheats.*"

3 N. W. P. 17;

1 Stokes Anglo-Indian Codes, p. 253.

Hence false statement as to a *future fact,* or even a present intention not to do that which one says he will do, may constitute a deception within the meaning of the Indian Offense of Cheating, and consequently one punishable by as much as seven years at hard labor and a fine. This led an Indian Court to observe that:

"The obvious inconveniences resulting from such a doctrine can only be avoided by cleaving to the rule that mere *breach of contract is not* even *prima facie evidence of an original fraudulent intention.*"

Mayne Commentaries on the Indian Penal Code, 350; 9 Bom. H. C. 448;

See foot note—Stokes Anglo-Indian Codes, p. 252.

This we think is the controlling distinction that should be applied in this case. There is no testimony or evidence in the Record of a fraudulent intention on the part of the appellant at the time he asked for credit.

The fact that he had no funds in the hands of the drawee of the draft, and that he had no express authority to draw, cannot under the above decision be regarded as *prima facie* evidence of fraudulent intent, and the actual testimony in the case and the circumstances surrounding the obtaining of credit completely disproves any actual fraudulent intention.

The gist of the Indian offense of cheating is, as has been seen, a dishonest intention not to perform a promise of future performance, which promise has been relied upon by the

promisee, whereas the gist of the American crime of obtaining property by false representations, is a false statement concerning a past or existing fact.

The elements that constitute the offense of cheating in India do not constitute any crime at all in America. It is not every dishonest act that can be said to be a criminal act. The extradition treaties have to do with certain crimes of the more reprehensible or dangerous character, and in the case of our treaty with Great Britain these crimes are limited to thirteen in number. It has never before been suggested that a man who does not pay his debt when it is due and whose offense is of a no more reprehensible or dangerous character than this, must be surrendered to the justice of an Alien Nation to stand trial at a place where unsworn and hearsay letters of attorneys and detectives in the employ of the creditors seem to be given the weight of legal evidence, and where the law punishes with fearful and shocking severity a mere failure to perform a promise of future payment.

Article X of our Treaty with Great Britain of August 9th, 1842, which is still in force, provides that no person shall be surrendered by either Nation except upon such evidence of criminality:

> "as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

See—

Pettit vs. Walshe, 194 U. S. 205.

The Treaty provisions, as well as the law of the place where the accused was arrested were both ignored by the Judge, who, acting as commissioner, has held Colonel Collins for the action of the State Department.

The following extracts from the Record of the hearing at New Orleans will be sufficient to establish this proposition:

"(The Court): Do you think that any testimony in defense is relevant, or anything of that sort?

"(Mr. Spearing): Why certainly, if I can prove he didn't make any false pretenses.

"(The Court): It doesn't make the slightest difference if he did or did not. It is a question for the Court in India.

"(Mr. Spearing): I submit, if I prove as a matter of fact, there was no false pretense——

"(The Court): I have nothing to do with that whatever. The question of identity and sufficiency of these depositions is the only thing before me. * * * The only question here is the question as to the identity of the accused and the question whether or not he was in India at the time this alleged offense is supposed to have been committed. There are two things the defendant can show: either he is not the man wanted, or that he was not there at the time the offense is supposed to have been committed. Now he was there at the time and he admits he is the man."

Again, after the letter of Little & Co., solicitors for Pohoomull Brothers, addressed to Mrs. Muntz, then engaged to marry Col. Collins, and now his wife, in which they take the position that their clients had delivered the pearl necklace to her upon her assumption of the debt for the unpaid balance of the purchase price and looked to her for payment thereof, had been offered in evidence together with an agreement signed by Pohoomull Brothers in which they undertook not to present Colonel Collins' draft for about ninety days, the Judge remarked:

"(The Court): I exclude that. Those are all along the line of showing it is a commercial transaction.

"(Mr. Spearing): Yes, purely and only a commercial transaction.

"(The Court): It was a commercial transaction?

"(Mr. Spearing): Certainly it was.

"(The Court): I will make the same ruling. I will exclude it all.

"(Mr. Spearing): I also offer in evidence numerous and various letters and certificates, showing the military standing and title of the accused, before and after he was in India, but all before the charges were brought.

"(The Court): I think they are no more relevant than the others. I will exclude those" (Ad. Rec., pp. 65 and 66).

And again, after the hearsay character of the statements in the "Morser" and "Kemp" letters from London had been pointed out:

"(The Court): The certificate says it would be admissible.

"(Mr. Spearing): But it would not be admissible here.

"(The Court): All of this evidence was admitted before the Magistrate.

"(Mr. Spearing): The Magistrate, yes, and the United States Consul has said that it is admissible there, but your Honor knows it would not be admissible here; your Honor would not admit that testimony here if the accused was charged with an offense here and it was attempted in this country to offer in evidence on any trial, civil or criminal, a letter from an attorney——

"(The Court): Yes, but they may have different rules of practice if they want to" (Ad. Rec., p. 68).

And again:

"(Mr. Spearing): * * * Take that report of the private detective in London, hearsay of the worst kind. It may be that that is admissible in India. Your Honor knows, and I know, that it is not admissible here, though under your Honor's ruling, if the certificate is attached, it is admissible in this case.

"(The Court): I say, it is a settled rule of this Court that, in extradition proceedings, no matters of defense are admissible; there are only two questions that can be inquired into, the question of identity and the question of whether the accused was present in the demanding state at the time the crime was supposed to have been committed" (Ad. Rec., p. 69).

That the Judge at New Orleans erroneously believed that the law of this land affords no protection to a man whose extradition is demanded, provided only the documents are in formal shape and the man is honest enough to admit his identity and that he was at the place where the crime is alleged to have been committed, and also that it matters not whether the alleged acts constitute a crime by the law of the place where he is found and taken into custody, is shown by this quotation from the Record of the hearing:

"(The Court, interrupting): Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn't make the slightest difference. If this case was tried before a jury, and there was no evidence that he told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation 'not authorized to draw,' *and nothing else but that,* the jury would be warranted in finding him guilty" (Ad. Rec., p. 73—see also, "Offer" and Ruling, Ad. Rec., p. 98).

This was gross error and it explains, we respectfully submit, why Colonel Collins is now in jail for having committed no greater offense than failure to pay a debt contracted in perfect good faith; a debt that he could and would have paid when due if he had not lost all the money that he invested in the oil property hereinbefore mentioned, an investment that the jewelers knew of, because he told them of it as the cause of his inability to pay cash in full and of his having to ask for credit for a portion of the purchase price.

It was gross error for the Judge to hold and rule that the return unpaid of a time draft with the words written on the back thereof by some bank clerk or runner "not authorized to draw," is equivalent in a criminal proceeding of legal evidence of want of authority to draw.

It was gross error for him to hold and rule that when there is no evidence of a false representation of a past or present fact, that the mere non-payment of a time draft *given after* the delivery of the goods would warrant a jury in this country in finding the drawer of the draft guilty of obtaining property by false pretense. The correct view, we submit, is that a time draft is nothing more than a promise that when it matures it will be paid, just as a term note is a promise to pay its amount at maturity.

To this view, however, the Judge expressed dissent and evidently based his conclusion upon this, his fundamental error, be it said with due respect, namely, that a time draft is a promise that it "will be paid *by the person on whom it is drawn.*" No authorities need be cited upon the proposition that a time draft is nothing more than an order to pay. If accepted by the drawee he becomes the primary debtor, and the drawer remains bound as his surety. If not accepted, the drawer remains primarily bound and if, as in these cases, the vendors of the jewels agreed to defer presentation of the

drafts, as they all did, until the expiration of sixty days, seventy days and ninety days, respectively, then the drafts constituted nothing more than evidences of the drawer's promises to pay at the maturity of the drafts in case the drawees failed to do so. The drafts were in no way different, so far as constituting evidence of a false representation is concerned, than sixty, seventy and ninety days' notes would have been, and it is clear that a man cannot properly be surrendered for extradition to India because he fails to pay his promissory note.

Colonel Collins is charged with an unextraditable offense. This point was made, but was overruled. The protection of the law of Louisiana was then invoked on his behalf, upon the ground, as has been herein shown, that the Treaty affords him such protection. This point was also denied him, the Judge holding: (*a*) That "they may have different rules of practice if they want to" in India (Ad. Rec., p. 68); and (*b*) the crime of obtaining goods by false representations is committed by a man who makes no representation at all, but who merely gives his time draft for a portion of the purchase price; provided that draft is returned with the words "not authorized" written upon it. And this in the face of the law of Louisiana as laid down in State vs. Colly, *supra,* not to mention the universal doctrine in this Country to the effect that a false representation must relate to a past or present fact and cannot relate to a future event.

Exclusion of Practically All Evidence Offered on Behalf of Accused.

The Record shows the argument made by Mr. Spearing in support of his contention that it was the duty of the Judge to hear testimony in explanation of the matters and things referred to in the *ex parte* depositions taken at Bombay (which

argument we adopt and refer to with much confidence (Ad. Rec., pp. 66 to 75), and it also shows the conclusion of the Judge, which was that he would exclude everything else that the accused might testify to on his own behalf, or that other witnesses might testify to on his behalf, *except the admission that he was there at the time, and that he is the man described in the documents from India.*

It is true that at the hearing Colonel Collins was allowed to commence his testimony with reference to a statement in Alli Raza's deposition, to the effect that "there was some conversation about giving credit at the first interview," but the Judge's final conclusion and ruling upon the hearing on the Alli Raza charge was the same as on the other charges, *i. e.*, that all testimony must be excluded except that in relation to the identity of the accused and his presence in India at the time of the alleged transactions.

This is fully shown on page 98 of the Additional Record, to which we ask particular attention.

We respectfully submit that this was gross and most injurious error.

In the matter of *In re* Ferez, 7th Blatchford, 34, and same case Fed. Cases, 4645, it was held in an extradition case that the accused has a right to be examined as a witness in his own behalf, if he is a competent witness, by the laws of the State in which he is found; and *In re* Kelly, 25 Fed. Rep. 268, it was held that he also has the right to examine witnesses in his own behalf.

The Kelly case arose under the Treaty of 1842 between this Country and Great Britain. Judge Nelson in that case cited Judge Blatchford's decision in *In re* Ferez, *supra*, with approval, and discharged the accused upon a writ of *habeas corpus*, saying that it was a fatal error for the accused to have been denied his right to call a witness on his own behalf.

The same point is considered in *In re* Charleston, 34 Fed. Rep. 531, which is another case arising under our Treaty with Great Britain, and it was there held that the accused has the right to examine witnesses on his own behalf before the committing magistrate, and that the competency of evidence is to be determined by the law of the State in which the hearing is had, which is merely another way of stating that which the treaty itself so clearly provides, *i. e.*, that no person shall be surrendered by either of the two nations concerned except upon such evidence of criminality,

> "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

Section 1010 *of the Revised Statutes of the State of Louisiana* of 1870, which section is still in force in that State, provides that if the offense is not punishable by death it will be the duty of the judge or committing magistrate

> "to examine on oath, such witnesses as may appear against him (the accused) and reduce their depositions to writing. *It shall also be his duty to receive the voluntary declaration of the person accused,* and the answers which, without promise or threat, he shall make to the questions which the examining judge or magistrate shall put to him, and cause them to be reduced to writing and signed by the prisoner in his presence and that of two witnesses, or if he cannot sign, to mention that circumstances and to certify the declaration with his signature and that of two witnesses, which declaration thus certified and signed shall be evidence before the grand and petit jury."

The learned counsel for the respondent falls into another error in paragraph 5 of the return to the writs herein (Ad. Rec., p. 9).

He attempts to draw a distinction between an offer to testify, and an offer to make a voluntary statement. This error no doubt arose out of his interpretation of the words from Section 1010 of the Revised Statutes of Louisiana of 1870, printed in italics above. He apparently overlooked the provisions of Act 45 of the General Assembly of Louisiana of 1886, which reads as follows:

> "When any person charged with having committed any offense against the laws of this State, is brought before any justice of the peace or other committing magistrate in any parish of this State, or before any of the recorders of the City of New Orleans, it shall be the duty of said justice of the peace, committing magistrates and recorders of the City of New Orleans, to take in writing, the depositions and evidence of all material witnesses on behalf of the State, *and when so requested by the accused, the evidence of the material witnesses for the defense,* and also, in the discretion of said justice of the peace or recorder, to take their recognizance or bond in such sum as may be reasonable, conditioned for their appearance before the Court having jurisdiction of the offense, there to give evidence in the case and not to depart without leave of the Court; which depositions and recognizances or bonds shall be forthwith returned to the clerk's office of the Court having jurisdiction of the case."

This law is referred to in State *ex rel* District Attorney vs. Recorder, 45 La. An. 309, in which the Court gives the history of the legislation in Louisiana on the subject, and

on page 313 recognizes that this Act makes it the duty of the Committing Magistrate to receive and have reduced to writing the testimony of witnesses for the defense, and goes on to say:

> "This act applies in all cases (when any person charged with 'having committed *any* offense') before committing magistrates, and is not irreconcilable with the duties devolving upon recorders in bailable cases. It is not limited to capital cases, but applies generally in all cases before 'committing courts.' "

This case in substance holds that under the laws of Louisiana, an accused, no matter what the offense charged, is entitled, on the preliminary examination, to introduce evidence in his behalf—not only his own testimony, but the testimony of other witnesses—and such documents as may be material, so the Committing Magistrate may determine whether or not such a *prima facie* case has been made out on the preliminary hearing as will justify the committing of the accused for trial.

In State vs. Steuart, 34 La. An. 1037, it was held that the accused is entitled upon preliminary examination before the Judge or Committing Magistrate, to have other witnesses than himself examined in his own behalf.

In Tinsley vs. Treat, 205 U. S. 20, it was held that the regular practice which exists in some States, under which one indicted of crime is not entitled to a preliminary examination prior to the trial on the merits, has no application to proceedings under United States Revised Statutes, Sec. 1014, for the arrest and removal to another Federal district for trial of a prisoner there charged with offense against the United States, and, in an opinion by Chief Justice Fuller, it is shown that the refusal to admit the evidence of the ac-

cused, to the effect that he could not have committed the crime of which he stood charged because he was not at the place where the alleged crime was committed at the time of its alleged commission, amounted to such fatal error as to justify the discharge of the accused upon a writ of *habeas corpus*.

In Charlton vs. Kelly, 229 U. S. 447, which was a case arising under our treaty with the Kingdom of Italy, it was said:

> "There is not and cannot well be any uniform rule determining how far an examining magistrate should hear a witness produced by the accused person. The proceeding is not a trial. The issue is confined to the single question as to whether the evidence for the State makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. Such committing trials, if they may be called trials in any legal sense, are usually regulated by *local statutes*."

In that case the committing magistrate refused to hear evidence of insanity and his action in so doing was sustained by the Supreme Court, but the opinion states that by the law of New Jersey an accused has no right to have evidence exonerating him go before a grand jury and in that State, unless the prosecution consents, such witnesses may be excluded.

We have already seen that the law of Louisiana is the opposite, in that respect, to the law of New Jersey.

See also—

In re Martin, 5 Blatchford, 303.

If the authorities we have cited upon this point do not of themselves conclusively establish the error of the committing judge in excluding all evidence of witnesses who were pres-

ent in Court and who had come great distances to testify in explanation of the alleged transactions, and in excluding all evidence of Colonel Collins except his admissions of identity and presence at the place and time of the alleged transactions, the statute that we now refer to would certainly seem to dispose of the matter in favor of our contention.

Section 5270 of the Revised Statutes of the United States provides that whenever there is a treaty or convention for extradition betwen the Government of the United States and any foreign Government, the Judge or Commissioner, having jurisdiction in the place where the accused is found, shall issue his warrant for the apprehension of the person charged that he may be brought before such Judge or Commissioner

> *"to the end that the evidence of criminality may be heard and considered."*

If there had never been judicial interpretation of the words we have quoted from the statute, showing that "evidence of criminality" means evidence both for the prosecution and for the accused; if the treaty between Great Britain and our Country had omitted the provision, heretofore referred to, which makes the "laws of the place where the fugitive shall be found" the sole test of procedure and criminality, the Act of Congress of August 3, 1882, Chap. 378, Sec. 3, 22 Stat. 215, would resolve this question in favor of our contention, for in that statute it is provided that:

> "On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged, setting forth that there are witnesses whose evidence is material to his defense, that he can not safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means and is actually not able to pay the fees of such witnesses, the judge or commis-

sioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed and in such cases the cost incurred by the process and the fees of witnesses shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed on behalf of the United States."

If, as the committing Judge must have supposed, Colonel Collins had neither the right to testify on his own behalf, nor to have witnesses examined on his behalf, then there has stood upon the statute books of the United States during thirty-six years, a perfectly useless and misleading statute, for it is impossible to conceive that Congress intended that an indigent accused was to have the right to testify and examine witnesses on his own behalf in extradition proceedings, unless that same privilege is to be extended to all persons alike.

As was pointed out by this Court in the case of Grin vs. Shine, 187 U. S. 181 (47 L. Ed. 130), it is not intended that extradition treaties should be made the pretext for collecting private debts or of wreaking individual malice. For this reason defects in extradition proceedings which are merely technical are entitled to receive full and deliberate consideration. In this case not only technical but fundamental rights of the petitioner have been disregarded.

The Record shows that Colonel Collins was examined at New Orleans on November 21, 1918, and he was allowed to testify to a limited extent only (Ad. Rec., pp. 89 to 98). Judge Foster, however, excluded from his consideration, all of this testimony and the additional testimony tendered on behalf of the appellant, which tender will be found in the Additional Record, p. 98 and 61 to 66.

VARIANCE BETWEEN THE CERTIFICATE OF THE POLICE COURT OF BOMBAY AND THE CERTIFICATE OF THE SECRETARY TO THE GOVERNMENT OF INDIA AND THE CONSUL-GENERAL OF THE UNITED STATES OF AMERICA AT CALCUTTA.

In the Alli Raza case, while there is no formal *Information,* there is a certificate of the Chief Presidency Magistrate stating that the accused is charged with *Cheating* under Section 420 of the Indian Penal Code. The certificate of the Chief Presidency Magistrate stating the charge to be as above set forth is dated December 1st, 1917 (Ad. Rec., pp. 38 and 39).

The warrant was issued on December 1st, 1917.

No further steps in India were taken until April 2nd, 1918, when A. H. Grant, Secretary to the Government of India, in the Foreign and Political Department, made his certificate to the effect that the local police magistrate had authority to issue the warrant (Ad. Rec., pp. 77-78).

On April 8th, 1918, the Consul-General of the United States at Calcutta added his certificate. It will be noted that in this certificate of the Secretary and the Consul-General the charge against the accused is stated to be that of "obtaining valuable property by false pretences" (Ad. Rec., p. 77).

This irregularity and variance with respect to a most material matter, we respectfully submit, is fatal to the attempt to extradite the accused and should result in his discharge. The officials so certifying were located, as their certificates show, at Calcutta, while the police Court is at Bombay, and these officials could know nothing of the charge except as disclosed to them by the certificate of the magistrate before whom they were filed, nor do either of them state that they have any other knowledge of the matter than as so disclosed. In fact it is not within the province or authority of either of

them to do more than to formally authenticate the documents submitted to them. They can neither add anything to nor take anything from those documents. If a man stands charged with larceny neither the Secretary nor the Consul-General, or both acting in concert, can by anything they may choose to write into their certificates of authentication, change the offense charged to murder. Whatever they say the offense charged is, it remains what it was before they added their certificates, and that it was and is *Cheating* in each of these cases cannot be denied.

If an unextraditable offense can be changed to one that is extraditable by the simple expedient of *"stating the offence in terms of the treaty,"* of what use, may we ask, is it to impose treaty limitations upon the right of Great Britain to demand the surrender of persons who are found in this country? Even criminals may find a safe asylum here unless their crimes are within the terms of an extradition treaty. Col. Collins is not a criminal. It is true that he is an unfortunate man, who has trusted too confidently the alluring inducements of an oil land promoter and who thereby has been unable until this time to pay the balances due merchants who willingly extended credit to him, and who are now using, or at least are attempting to use the police department of Bombay and the State Department of the United States as collection agencies.

There is no proof in the Record that James A. Smith was Consul-General of the United States of America at Calcutta, India. Whether or not in a case of this kind Judge Foster, as committing magistrate, was authorized to take judicial notice of the fact, if it were a fact, that Mr. Smith was Consul-General at Calcutta, India, we are not definitely prepared to say, but we express our opinion that he was not, and we ask the Court to determine that question. If, however, Judge Foster was so authorized, then he was equally au-

thorized to take judicial notice of the fact that Stuart K. Lupton was at that time United States Consul at Bombay, India, the country where the offense is alleged to have been committed, and where all the proceedings took place before the Chief Presidency Magistrate's Court, Bombay.

Section 1674 of the Revised Statutes of the United States provides as follows:

> "The official designation employed throughout this title shall be deemed to have the following meanings, respectively: *First*—'Consul General,' 'Consul' and 'Commercial Agent' *shall be deemed to denote full, principal and permanent Consular officers, as distinguished from subordinate and substitutes.* * * * *Fifth*—'Diplomatic Officers' shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, charges d'affairs, agents and secretaries of legation, and none others."

The first section above quoted shows clearly that a Consul is a principal and permanent Consular Officer, who therefore clearly comes within the provision of Section 5271 of the Revised Statutes, which provides that any hearings upon complaints such as in this case, copies of depositions upon which the original warrant in the foreign country may have been granted in order to be evidence, must be certified to by the principal diplomatic or consular officer of the United States, resident in such foreign country. In this case it is clear, we submit, that the Consul at Bombay was the only one who, under this section, could so certify.

This is not only according to the letter of the law, but it is entirely reasonable, as in this case, all of the proceedings attempted to be authenticated, took place in Bombay, far removed from Calcutta.

If we are right in this contention it is clear that the proceedings in India were not properly certified, and the appellant is clearly entitled to be released on that ground.

THE COPIES OF DEPOSITIONS AND OTHER PAPERS PRODUCED BEFORE THE COURT OF THE CHIEF PRESIDENCY MAGISTRATE, BOMBAY, WERE NOT AUTHENTICATED SO AS TO MAKE THEM ADMISSIBLE IN EVIDENCE BEFORE THE COMMITTING MAGISTRATE, UNDER THE PROVISIONS OF SECTION 5271 OF THE REVISED STATUTES.

What is Section 5271 of the Revised Statutes?

The question immediately arises:

"*What is the text of Section 5271?*"

The latest edition of the Revised Statutes gives two texts, both in brackets, one in italics and the other in plain type, as follows:

Sec. 5271 (*In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section.*)

(In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or

other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section.)

The Compiled Statutes of the United States, 1918, in Section 10111, page 1668, gives the text as set forth above in italics.

In Vol. 3 Federal Statutes Annotated, 2nd Edition, p. 282, the same text is given and the question is discussed, and it is stated that by Section 6 of the Act of August 3, 1882 (22 Stat. 216) the text as printed above in plain type, which had been adopted by the Act of June 19th, 1876, C. 133, 19 Stat. 59, had been repealed and the language as printed above in italics had been restored.

We respectfully submit that this contention is correct.

The Act of June 19, 1876, contains no provisions whatever except the text of Sec. 5271, word for word is set forth above in plain type.

The Act of August 3, 1882 (22 Stat. 216), in Section 5 of the Act, sets forth the identical language found in the Act of 1876, and then provides in Section 6 as follows:

> "Sec. 6. The Act approved June 19th, 1876, entitled 'An Act to amend section fifty-two hundred and seventy-one of the Revised Statutes of the United States' and so much of said section fifty-two hundred and seventy-one of the Revised Statutes of the United States

as is inconsistent with the provisions of this Act are here by repealed."

The Act of 1876 having been thus first, in express terms repealed, it would be entirely inconsistent with the repealing Act to allow Section 5271 to remain in the exact language established by the repealed Act.

There are two important differences in the provisions of these two texts:

1. The italicised text provides that copies of the foreign depositions can only be received in evidence before the Committing Magistrate when "attested upon the oath of the party producing them to be true copies." This provision is not found in the other text.

2. The italicised text only provides for the admission of duly authenticated copies of *"depositions."* The other text admits copies of "warrants, *or other papers.*"

If, as we contend, the text of Section 5271 is as printed above in italics, then it follows that the copies of depositions upon which the proceedings are based, were inadmissible before the Committing Magistrate, as they were not "attested upon the oath of" F. T. Carlisle, the British Consul General at New Orleans, "the party producing them to be true copies of the original depositions."

For the same reason the other papers purporting to be copies of papers filed in the case in the Court of the Chief Presidency Magistrate, Bombay, were inadmissible, and these other papers were inadmissible for the further reason that under the italicised text of Section 5271, it is only provided that copies of the depositions so authenticated may be received in evidence, and it does not provide for the admission of copies of other papers, as is authorized under the text as printed in plain type.

THE APPELLANT NOW STANDS COMMITTED ON THREE CHARGES AND IF EXTRADITED COULD BE TRIED FOR ALL THREE OF THE ALLEGED OFFENSES.

By reference to the Additional Record, pages 101 to 105, it will be seen that on November 21, 1918, Judge Foster, as Committing Magistrate, consolidated the three charges of Pohoomul Brothers, No. 15927, Ganeshi Lall & Company, No. 15928, and Mahomed Alli Zaimel Ali Raza, No. 15963, and then committed the appellant "to be held for extradition to British India *for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India*, as set out in the complaining *affidavits* herein."

All three of the charges are pending before the Magistrate Court at Bombay, and the *"affidavits"* referred to are the affidavits supporting the three charges of Pohoomul Brothers, Ganeshi Lall & Company and Mahomed Alli Zaimel Ali Raza.

As to two of these charges the New Record, pages 27 and 28, shows that Judge Grubbs, sitting as District Judge, has decided that the appellant cannot be legally held.

The appellant is held on the Commitment of Judge Foster. Judge Grubb was not sitting as a Court of review; he was to determine only the question whether the Commitment holding the appellant upon three charges was legal. He found that it was not, and he should therefore have granted the writ. Not having done so, his judgment was erroneous and should be reversed, and the appellant discharged.

This point is not a technical one, nor can the appellee claim surprise. It was distinctly called to the attention of the learned counsel for the appellee (New Rec., pp. 23, 24 and 25), and Judge Grubb went so far as to say to him:

> "As a practical matter I think you are taking an unnecessary chance," to which the appellee's counsel replied: "I take it. * * * I would rather just take my chance."

As above stated, this is in no sense a technical objection, for since the case of United States vs. Rauscher, 119 U. S. 407, the law has been firmly established that upon extradition to a foreign country the accused can only be tried for the specific offenses named in the extradition proceedings against him.

Moreover this was expressly incorporated in the Treaty with Great Britain of July 12, 1889 (26 Stat. 1508) where it is provided:

> "Article III. No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or *offense,* committed prior to his extradition, other than the *offense* for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered."

Additional Suggestions.

We wish to call particular attention to the great difference between the *allegations* made upon information only, in the affidavit of complaint of T. F. Carlisle, British Consul General at New Orleans, found on pages 76 and 77 of the Additional Record, which he claims are based upon the copies of depositions, etc., filed, and the allegations that are really contained in those depositions, etc. The depositions, etc., do not anywhere state that the appellant represented to the complainant, Ali Raza, that he was a Colonel in Howe's Battalion in the Royal Navy Division, and that he was on six months' leave, nor do they anywhere state that the appellant then and there had a right to draw a draft for £1,700 on Messrs. E. Curtis & Company, nor do they state that the appellant ever represented to the complainant that Curtis & Company were bankers. As already shown, practically all that the depositions, etc., charge is that the appellant asked

for credit; his standing was independently investigated, and he was given credit.

This is not the ordinary case of a foreign extradition. The appellant and all his principal witnesses reside either in this country or in England, many thousands of miles away from Bombay, where the trial would take place, and his removal there, in his impoverished condition, would leave him practically helpless.

He is a man shown not only to have rendered valliant service to his own country, but to this country, and in fact to the world at large, in the terrible cataclysm of the World War. Broken down in health, and for the time being relieved from the strain of the terrible experiences to which he had been subjected, and being flushed by extraordinary success in recent stock operations, is it to be wondered at that he was enthusiastically optimistic, and that he should believe that the enterprises in which he was then engaged would be equally successful, and that he should have ample means to pay for the jewelry which he purchased?

The Record shows that the complainants sought out the appellant and the ladies with him, and importuned them to purchase more jewelry than he felt he was in position to buy, and yet they returned to him and willingly gave him credit. We most respectfully submit that this is a case where the appellant should only be surrendered upon the clearest evidence of probable cause for believing him guilty.

In the case of: In re Ezeta, 62 Fed. Rep. 964-972, the proposition is laid down that under Section 5270 of the Revised Statutes the evidence

> "should amount to probable cause for believing him guilty; * * * and the evidence of criminality is to be judged by the laws of the United States and the State in which they are arrested."

The evidence accepted in this case is much of it of a character that could not be received in any Court in any State

of the United States. We believe that it is of such character in fact that this Court would be fully justified in ruling that it would not be received in the Courts of India, notwithstanding the alleged certificate attached. We cannot believe it is possible that it was the intention of either of the contracting parties to the Treaties with Great Britain that unsigned papers, unsworn to, should be admitted in evidence, no matter how authenticated (see Exhibit "A," Ad. Rec., p. 83; Exhibit "11," Ad. Rec., p. 87).

Nor de we believe that the Treaties of Great Britain and the Extradition Statutes of the United States ever contemplated that an unsworn report of the results of alleged interviews with unnamed parties, made as shown in this case, by an alleged detective under the name of *William H.* Kemp, and enclosed in an unsworn letter which refers to a report made by a Mr. *Brewster* Kemp, should be received as evidence of criminality, which would lead to the transportation of an accused party to the other side of the world; and yet that is the situation in this case as will be seen by an examination of the letter of Harry Morser enclosing the alleged report of William H. Kemp (Ad. Rec., pp. 84 to 87).

We wish to call to the attention of the Court that there is no evidence in this case that the appellant had been adjudged a bankrupt in England, except that contained in this alleged report of William H. Kemp, while the appellant in his testimony states that he does not know of any such bankruptcy proceedings (Ad. Rec., p. 93).

The London Depositions.

The Brief of the counsel for the appellee under heading VI, beginning on page 25, contends that certain depositions from London and Glasgow attempted to be introduced in the other two cases and excluded by Judge Foster as Committing Magistrate (Ad. Rec., p. 59), should have been received in

evidence. In so much as these depositions were excluded by the Committing Magistrate, they certainly form no part of the Record in this case and could not be made to piece out the imperfections of the original proceedings.

But these depositions clearly could not be admitted in evidence under either of the texts of Section 5271 of the Revised Statutes. They were authenticated by the Secretary of the Ambassy at London who certainly was not such an official authorized under the law to make such authentication.

Distinction Between Foreign and Interstate Extradition.

It seems hardly necessary to call the attention of the Court to the great difference between the law of extradition to a foreign country and the law of extradition from one State to another within the United States. This distinction is very clearly and ably set forth by His Honor, Judge Clarke, in Biddinger vs. Commissioner of Police, 245 U. S. 128. It is perfectly evident that Judge Foster as Committing Magistrate, did not keep this distinction in mind.

CONCLUSION.

Lieutenant-Colonel Charles Glen Collins should be discharged from custody, upon the following grounds, among others:

1. That the transactions proved by the depositions are not criminal in their nature, even according to the Indian law.

2. That even if said transactions are criminal according to the Indian law, they constitute the offense of cheating under Section 420 of the Penal Code of India, and that said

offense is not an extraditable one under either of the three extradition treaties in force between this Country and Great Britain.

3. That there is a material difference between the offense of cheating under Section 420 of the Penal Code of India and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment, where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is a false representation concerning a past or present fact.

4. That under the statutes of the United States and the extradition treaties with Great Britain, the law of the place where the person charged is found, determines the character and the competency of evidence of alleged criminality necessary to justify such person's apprehension and commitment for trial, to the same extent as if the crime or offense had been committed at the place where such person is found, and that the transactions proved by the depositions constitute no offense or crime under the laws of Louisiana.

5. That there is a fatal variance in the documents relied upon in that the charge is that the offense of cheating has been committed, while the certificates of the Secretary for the Indian Government and of the Consul-General of the United States recite the charge to have been of an entirely different nature and character.

6. That the committing Judge erred in excluding the evidence offered by and on behalf of the accused.

7. That the copies of the depositions and other proceedings in the Court of the Chief Presidency Magistrate, Bom-

bay, upon which the original warrant was granted were not admissible in evidence, because there is no proof in the Record that James A. Smith, who purports to sign as Consul-General of the United States of America at Calcutta, India, was at that time, in fact, such officer, nor is there any proof that the Consul-General at Calcutta, was "the principal diplomatic or consular officer of the United States resident" where the alleged offense was committed, as required by Section 5271 of the Revised Statutes, and without these depositions and other proceedings there is no evidence of criminality.

8. That the copies of the depositions and other proceedings in the Court of the Chief Presidency Magistrate, Bombay, upon which the original warrant was granted, were not admissible in evidence because they were not certified to by Stuart K. Lupton, who was at that time United States Consul at Bombay, and was "the principal diplomatic or consular officer of the United States resident" where the alleged offense was committed as required by Section 5271 of the Revised Statutes, and without these depositions and other proceedings there is no evidence of criminality.

9. That the copies of the depositions in the Court of the Chief Presidency Magistrate, Bombay, upon which the original warrant was granted, were not admissible in evidence because they were not "attested upon the oath of" T. F. Carlisle, the British Consul-General, at New Orleans, "the party, producing them to be true copies of the original depositions," as required by Section 5271 of the Revised Statutes, and without these depositions there is no evidence of criminality.

10. That copies of the other papers, not depositions, filed in the Court of the Chief Presidency Magistrate, Bombay, were not admissible in evidence because Section 5271 of the

Revised Statutes limits the admission of evidence to "depositions," and further because they were not "attested upon the oath of" T. F. Carlisle, the British Consul-General, at New Orleans, "the party producing them to be true copies" as required by said section, and without these papers there is no evidence of criminality.

11. That the commitment upon which the appellant is being held refers to three separate and distinct offenses upon which the appellant could be tried, if surrendered to the authorities in India, whereas Judge Grubb, the District Judge before whom the Habeas Corpus proceedings were tried, has rendered a decision that upon two of these charges the appellant should be discharged.

Each one of these grounds is alone sufficient to justify the discharge of the accused. The United States is not a Collection Agency for either foreign or domestic merchants, nor should it be possible for it to be so used.

Respectfully submitted,

J. ZACH. SPEARING,
J. KEMP BARTLETT,
GUION MILLER,
Attorneys for Appellant.

APPENDIX.

a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS, Appellant,
versus
FRANK M. MILLER, United States Marshal, Appellee.

J. Zach Spearing, Esquire, for Appellant.
Robert H. Marr, Esquire, for Appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable within Thirty (30) Days from the Eighth (8th) Day of March, 1919, at the City of Washington, D. C.

1 *Petition.*

Filed January 8, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the United States District Court for the Eastern District of Louisiana:

The petition of Charles Glen Collins respectfully represents and shows to this Honorable Court, as follows:

1. Your petitioner is imprisoned and restrained of his liberty in the House of Detention in the City of New Orleans, in the State of Louisiana, in the custody of Frank M. Miller, United States Marshal for the Eastern District of Louisiana, by virtue of two certain warrants dated the 31st day of October, 1918, and the 21st day of November, 1918, respectively, issued by Honorable Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, copies of which warrants are hereto annexed, marked, respectively. "Exhibit A" and "Exhibit B," and made a part hereof.

2. On the 12th day of November, 1917, your petitioner was arrested and taken into custody by the said Frank M. Miller, United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 5th. day of November, 1917, issued by Honorable Sam M. Hitchcock, United States Commissioner for Southern District of New York, a copy of which warrant is also hereto annexed, marked "Exhibit C," and made a part hereof.

2 3. The said last mentioned warrant was issued by the said Commissioner upon a complaint purporting to have been made by C. Olive Bayley, Esquire, British Consul-General at the City of New York in the State of New York, before the said Commissioner, a copy of which complaint is also hereto annexed, marked "Exhibit D" and made a part hereof.

4. On the 18th day of October, 1918, your petitioner was arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 18th day of October, 1918, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed, marked "Exhibit E," and made a part hereof.

5. The said last mentioned warrant was issued by the said Judge upon a complaint purporting to have been made by

Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Judge, a copy of which complaint is also hereto annexed, marked "Exhibit F," and made a part hereof.

6. On the 18th day of October, 1918, and again on the 8th day of November, 1918, your petitioner was arrested and taken into custody by the said United States Marshal under and by virtue of two warrants dated the 18th day of October, 1918, and the 8th day of November, 1918, respectively, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrants are also annexed hereto, marked "Exhibit C," and made a part hereof.

3 7. The last mentioned warrant was issued by the said Judge upon complaints purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, in the State of Louisiana, before the said Commissioner, a copy of which complaints are also hereto annexed, marked "Exhibit H," and made a part hereof.

8. On the 28th day of October, 1918, your petitioner was arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, and after a hearing held on the 28th day of October, 1918, and the 30th day of October, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit A) therefor to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

9. On the 21st day of November, 1918, your petitioner was again arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, and after a further hearing held on the 21st day of November, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued
4 his warrant (Exhibit B) therefor, to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

10. Your petitioner's detention and imprisonment is illegal and unconstitutional, because:

(*a*) The aforesaid complaints are based upon certain Informations filed against your petitioner before the Esplanade Police Court of Bombay, India, charging your petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code, and that such offense is not an extraditable one under any extradition convention or treaty in force between the United States of America and the Kingdom of Great Britain.

(*b*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of the aforesaid hearings, due process of law, in that he was denied the right and opportunity accorded him by the laws of the State of Louisiana, to make a voluntary declaration on his own behalf, and was also denied the right and opportunity accorded him by said laws to have other witnesses than himself examined upon his own behalf.

5 (*c*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the right possessed by him under the Tenth Article of the Treaty between the United States of America and the Kingdom of

Great Britain of August 9th, 1842, to the protection of the laws of the State of Louisiana, in which State your petitioner was arrested; and according to the laws of which State your petitioner had the right to make a voluntary declaration and to have witnesses examined in his own behalf before the committing Judge or Magistrate.

(*d*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the protection of the Fifth Amendment to the Constitution of the United States of America, in that he has been deprived of liberty without due process of law, the treaty between the Kingdom of Great Britain and the United States of America expressly providing that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed," and that according to the laws of the State of Louisiana, in which State your petitioner was arrested, as aforesaid, he was entitled to testify on his own behalf, and also was entitled to have witnesses examined in his own behalf before the committing Judge or Magistrate and that these rights were denied to your petitioner.

(*e*) No legal proof was submitted to, or produced
6 before, the Honorable Rufus E. Foster, of the commission by your petitioner of the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul General at the City of New Orleans, or of the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court, of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or of any other crime or offense.

(*f*) No legal proof was submitted to, or produced before, the Honorable Rufus E. Foster, on which reasonable ground for a belief that your petitioner had committed the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul General at the City of New Orleans, or the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or either or any of said crimes or offenses, or any other crime or offense, could be based.

7 (*g*) None of the evidence, papers and exhibits which were submitted to the Honorable Rufus E. Foster, over the objection and protest of your petitioner, were authenticated in accordance with the provisions of the statutes in such case made and provided, so as to entitled them to be received in evidence in the said proceeding.

(*h*) The transactions proved by the depositions that were admitted in evidence over the objection and protest of your petitioner are not criminal in their nature, according to the laws of the State of Louisiana, in which State your petitioner was arrested and they are not even criminal according to the laws of British India, but constitute commercial transactions in which credit was freely and voluntarily extended to your petitioner by each and every one of the merchants therein named.

(*i*) Even if said transactions are criminal according to the laws of British-India, they constitute, under said laws, the offense of cheating as prescribed by Section 420 of the Penal Code of India and the said offense is not an extraditable one under either of the three extradition treaties or conventions in force between the United States of America and the Kingdom of Great Britain.

(*j*) There is a fatal variance in each of the three sets of documents forwarded to this country from Bombay, India, in that in each set of documents it appears that charge brought against your petitioner is that of the offense of cheating under Section 420 of the Penal Code of India, while in the authenticated certificates of the Secretary for the
8 Indian Government and of the Consul-General of the United States at Calcutta, India, the charges brought against your petitioner, are stated to have been of an entirely different nature and character; namely, that of obtaining valuable property by false pretenses.

(*k*) There is a material and radical difference between the non-extraditable offense of cheating under Section 420 of the Penal Code of India, and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is, according to the laws in force in the State of Louisiana, a false representation concerning a past or present fact and that *a promise is not a pretense* within the meaning of the Louisiana statute, *even when the party making the same does not intend to keep it.*

11. Your petitioner is advised and verily believes it to be true, that his imprisonment and detention aforesaid is illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, for the reasons aforesaid, and that your petitioner has been, and is being deprived of his liberty without due process of law, in violation of the said treaty and also in violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, in order that your petitioner may be re-
9 lieved of his unlawful detention and imprisonment,

your petitioner prays that writs of habeas corpus and certiorari may issue out of this Court, directed to the person or persons having your petitioner in custody and to the said Honorable Rufus E. Foster, commanding them, and each of them, to produce the body of your petitioner before this Court, and to return all the proceedings had against him to this Court, and to do and receive what shall then and there be considered in the matter.

No previous application has been made for the said writs.

(Signed) J. ZACH SPEARING,
Attorney for Petitioner.

(Signed) CHARLES GLEN GOLLINS.

STATE OF LOUISIANA,
City of New Orleans, ss:

Before the subscriber, a Notary Public in and for said City and State, personally appeared Charles Glen Collins, who being duly sworn, deposes and says:

That he is the petitioner herein; that he has read, and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to the matter he believes it to be true.

(Signed) CHARLES GLEN COLLINS.

Sworn to before me, this 27th day of December, 1918.

[SEAL.] (Signed) J. ZACH SPEARING,
Notary Public.

To the Clerk:

Let a writ issue as prayed for, returnable Saturday, January 11th, at 10 A. M.

Given this 8th day of January, 1919.

(Signed) W. I. GRUBB,
District Judge.

10 *Writ of Habeas Corpus.*

Issued January 8, 1919.

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, U. S. Marshal.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to bring and produce before this Court on Saturday, the 11th day of January, 1919, at 10 a. m. the body of Charles Glen Collins, now in your custody in the House of Detention in the City of New Orleans, together with the cause of his caption and detention; there to abide what shall be awarded by the Court in the premises, and herein fail not under penalty of the law.

Witness, the Honorable Rufus D. Foster, Judge of said Court, at New Orleans, La., this 8th day of January in the year of our Lord one thousand nine hundred and nineteen.

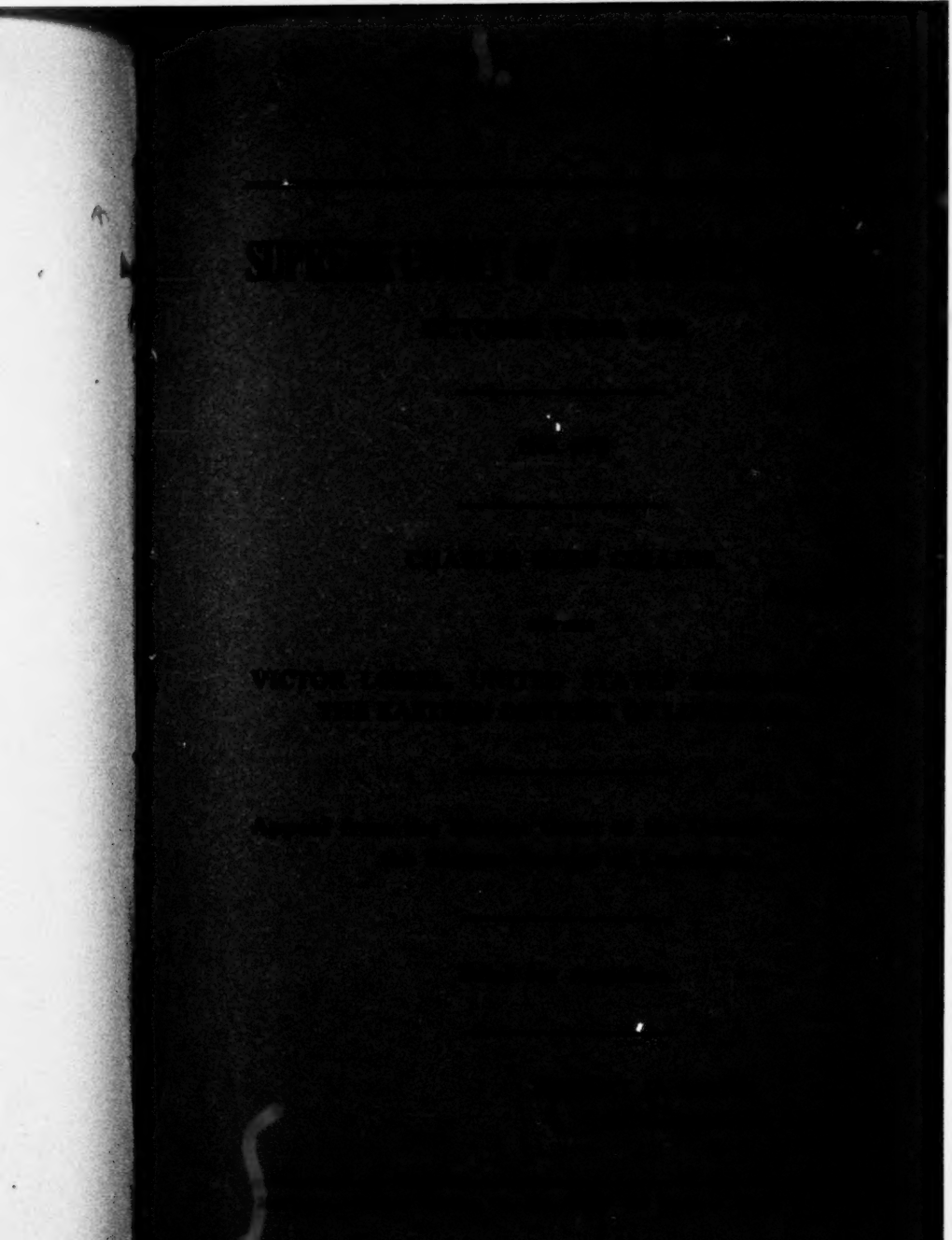
[SEAL.] (Signed) H. J. CARTER, *Clerk.*

Clerk's Office.

A true copy.

(Signed) H. J. CARTER, *Clerk.*

New Orleans, La., January 8, 1919.



I.

SUBJECT INDEX.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

NO. 672

CHARLES GLEN COLLINS,

Appellant,

versus

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

Brief for Appellee.

STATEMENT OF CASE.

In October, 1918, three affidavits were made against Charles Glen Collins, charging him with being a fugitive from the justice of India. Hearings were held on these

affidavits before Judge Rufus E. Foster, as extradition commissioner. Judge Foster having ordered the surrender of Collins under each of the three affidavits, Judge Grubb was applied to for *habeas corpus*. As to one of the affidavits the writ was refused, as to the other two they were remanded to Judge Foster with instructions to admit certain testimony. From the judgment of Judge Grubb each of the parties litigant took an appeal. Your Honors dismissed these appeals on the ground that the judgment appealed from was not final. Judge Foster having expressed the opinion that Judge Grubb was without authority to remand, the affidavits remanded were dismissed and new affidavits filed identical with the ones dismissed. Believing that the requirements of Judge Grubb had been complied with, the matter was once more presented to him for adjudication. He held that the new proceedings instituted before Judge Foster were not a compliance with his (Judge Grubb's) judgment remanding, that since that judgment had not been complied with he would now render a judgment granting the writs under the remanded affidavits, and under those affidavits discharge Collins from custody; that as to the other affidavit he refused the writ. From this judgment Collins has appealed. This judgment is a final judgment and disposes of the whole case.

The accused was charged with obtaining in Bombay on February 26, 1917, from Mohammed Alli Zaimel Ali Raza by false pretences (p. 76), one pearl button of the price and value of £1700 by representing that he was a wealthy

man; that he was a partner in the firm of William Collins Sons & Co. of Glasgow and London; that he was a colonel in the Howe Battalion of the Royal Naval Division and was then on six months leave; that he then and there had a right to draw a draft for £1700 on Messrs. E. Curtice & Co., and that the said draft would be paid and that the said E. Curtice & Co., 8 Clarges Street, London, were bankers: whereas in truth and fact the accused was not then and there a wealthy man, but on the contrary, a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Co.; that he was not a colonel in the Howe Battalion of the Royal Naval Division and that he was not then and there on six months leave; that he had no right to draw a draft for any amount on E. Curtice & Co. and the accused then and there knew said draft would not be paid and the said E. Curtice & Co. were not bankers.

The information and depositions in support of this charge (pp. 79-87) show that Mrs. Olsan purchased some pearls (p. 79) and that the accused chose a pearl button for himself. He gave to this complainant and another witness (p. 81) each a diary and wrote in the diaries, Lieut. Col. Charles G. Collins, C. M. G., c/o Messrs. Collins, Sons & Co., Ltd., Glasgow, Scotland (p. 83) and stated that William Collins Sons & Co., was his firm; that he held a considerable number of shares; that he was a partner in the firm; that he was on six months leave and would not take an active part in the business (p. 81).

In this case the accused was examined as a witness in his own behalf (pp. 89-92) and attempts to make it appear that the purchase of this pearl button was part of the transaction in which the necklace was purchased for Mrs. Olsan; it appears in his testimony, according to his own story, that she paid for the necklace that she purchased with a check on her father's firm of bankers and that he paid for the pearl button with a £1700 draft on E. Curtice & Co. In his testimony he does not claim that E. Curtice & Co. were bankers or that there was any such firm or that such a firm had ever been his agents and admits that Mr. E. Curtice had not been in the banking business; and states that Curtice was the owner of a number of boarding-houses and hotels and that he was a business man to that degree and had been associated with him many times in the past in business deals (p. 92). He admits he drew drafts on E. Curtice & Co. without authorization and without notification and without funds there to meet them (pp. 92-97) but claims they always paid his drafts in the past. He acknowledged that a petition for involuntary bankruptcy was filed against him in the United States in 1902. He also admits that in January, 1916, when he was making these representations and giving out his diaries and cards, that he was not a Lieutenant Colonel in the Royal Naval Division; that his connection with the Admiralty had to come to an end (p. 94). The representation made by him that he was a Lieutenant Colonel in the Howe Battalion of the Royal Naval Division on six months leave upon his own testi-

mony was a false representation. In his testimony he does not claim to be a partner in William Collins & Co. but would have it appear that his father had left shares of stock in this corporation in trust for the accused together with his brothers and sisters, but when asked what had become of his interest in that concern, would have it appear that banks in Glasgow had loaned large sums against his share.

On behalf of the prosecution in all of these proceedings, (pp. 59-88) there was offered in evidence the depositions duly certified as required by the act of August 3, 1882, of James Paterson and Hugh Allan, both directors in the firm of William Collins Sons & Co., Ltd., showing that the accused had never been a shareholder in the Company; that he never was an employee; that he never had at any time any personal connection with the business; that he had no authority to draw on the Company; that he had no reasons whatever for believing that a draft on the Company would be honored (pp. 5 and 6, addition to record).

There was also offered in support of the charges the depositions taken in London of John Richard Campbell Howie and Edward Curtice, showing the presentation of the drafts on Edward Curtice at 8 Clarges Street, London, and the draft drawn on William Collins Sons & Co., and that Edward Curtice of 8 Clarges Street, did not carry on any banking business anywhere; that he was not a member of any firm or company; that he did not know of any firm or Company called E. Curtice & Co. or E.

Curtice & Sons but that he recognized the accused by the photograph shown to him and had known him for ten or twelve years; that he had known his father and uncle and he had had business relations with the firm of William Collins Sons & Co., Ltd., of Glasgow; that the accused had no right or authority to draw on him in February, 1917, for £5,000 or any other sum; that Edward Curtice had never been advised that he had done so and if he had written to ask for such authority, he would have had to refuse.

Depositions of these witnesses taken in London and Glasgow were offered in each case and were refused admission (pp. 59-89) upon the ground that they were taken June 22, 1918, and were taken in Glasgow and London after the warrant of arrest had issued.

The Transcript of the former appeal before your Honors by stipulation, shows exactly the same method of obtaining by false pretenses practiced by Collins in the *Pohoomull* (pp. 11-30) and *Ganishi Lal* (pp. 34-53) *cases.*

POINTS.

I.

The Committing Magistrate had jurisdiction of the subject matter and of the accused. The review in this proceeding is limited to the simple question as to whether there was any legal evidence at all upon which the Magistrate could decide that there was evidence sufficient to justify the commitment of the appellant.

It is settled by the decisions of this Court, in proceedings for extradition, that if the committing Magistrate had jurisdiction of the subject matter and of the accused and the offense charged is within a treaty of extradition, and the Magistrate had before him competent legal evidence upon which to exercise his judgment as to whether the facts were sufficient to establish the criminality of the accused for the purpose of extradition, such decision cannot be reviewed on *habeas corpus* either originally or by appeal.

Charlton v. Kelly, 229 U. S., 447.
McNamara v. Henkel, 226 U. S., 520.
Grin v. Shine, 187 U. S., 181.
Terlinden v. Ames, 184 U. S., 270-278.
Bryant v. United States, 167 U. S., 104.
Ornelas v. Ruiz, 161 U. S., 502-508.

In *Ornelas v. Ruiz, supra (p. 512)*, Chief Justice Fuller, delivering the opinion of the Court, says:

> "We are of the opnion that it could not be held that there was substantially no evidence calling for the judgment of the Commissioner as to whether he would or would not certify and commit under the statute, and therefore, as a matter of law, he had no jurisdiction over the subject matter; this being so, his action was not open to review on *habeas corpus*."

In *Bryant v. United States, supra, p. 104*, Mr. Justice Brown said:

> "The question before the Commissioner in this case was whether in the language of the Treaty of

> 1842, Article X, 8 stat., 572-576, there was such evidence of criminality according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed. In other words, according to our laws, whether there was probable cause to believe him guilty of the crime charged. Rev. Stat., 5270, Benson v. McMahon, 127 U. S., 457-462. The question before us is even narrower than that, viz: whether there was any legal evidence at all upon which the Commissioner could decide that there was evidence sufficient to justify his commitment for extradition."

In *McNamara v. Henkel, supra,* it was held that the question simply is whether there was any competent evidence before the Commissioner entitling him to act under the statute. The weight of the evidence was for his determination.

II.

There was competent evidence before the Extradition Magistrate justifying the holding of the accused for extradition. The certificate of the Consul General of the United States at Calcutta, being in the required form, the depositions were properly admitted in evidence.

The Consul's certificate states that the annexed papers "are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by

the tribunals of British India as required by the Act of Congress of August 3rd, 1882" (p. 14).

The Act of August 3rd, 1822 (22 Stat., 216), is the law now in force, as to evidence on the hearing in an extradition case. Section 5 of this Act is as follows:

> "Evidence on the hearing. 'In all cases where any depositions, warants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, such depositions, warrants and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered are authenticated in the manner required by this act.'"

Where documentary evidence has been authenticated as required by the statute, it is admissible, the certificate determines the admissibility thereof, leaving to the extradition Magistrate merely the question of determining the sufficiency of the evidence therein contained.

Elias v. Ramirez, 215 U. S., 398;
Grin v. Shine, 187 U. S., 192.

The certificate of the principal diplomatic or consular office of the United States if in proper form is absolute proof, whatever may be the tenor of the certificates of the foreign officials to the same documents.

Re Fowler, 18 Blatch., 430; s. c., 4 Fed. Rep., 303;
Re Behrendt, 22 Fed. Rep., 700.

A review of the evidence discloses the fact that accused started out with the settled purpose to swindle Indian jewelers to as large an extent as possible: the son of a rich and prominent family, a man of wide travel and experience in practically every quarter of the world, and used to command, makes his appearance at Bombay in December of 1916 with two ladies of wealth. The party takes up quarters at a first-class hotel, and begins to make the acquaintance of people of position. He gets along well in making friends with English people and with the natives, paying visits to various Rajah friends. To obtain the recognition of Europeans of standing the relations between accused and the two ladies traveling with him must be satisfactorily explained, hence to his English acquaintances he introduces one of the ladies as his wife, the other as his sister; but when he wished to cheat Pohoomull Bros. out of 75,000 rupees of pearls, he has his "fiancee" make the selection as "a wedding present" (p. 22).

After a short stay at the hotel the Collins party takes a bungalow in a quarter of Bombay where the rich reside,

(p. 19) frequents the shops of the complaining witnesses and buys rather freely, paying cash or in checks that are cashed. Having thus skilfully built up a fictitious credit he prepares to make a grand coup.

On February 2, when Mr. Lokumull called at the Collins' bungalow with the pearl necklace, accused gave in payment a sixty-day draft for £5,000 drawn on E. Curtice & Co. Mr. Lokumull returned with the draft and the necklace to Pohoomull Bros., not being satisfied with the draft.

At a conference at which were present, accused, the manager of the bank with which Pohoomull Bros. did business and a member of the Pohoomull firm, it was agreed that accused would telegraph his agents to pay the draft on presentation, thus changing it from a time draft to a sight draft. With this understanding, the draft was accepted and on February 7, the necklace was delivered to accused. On February 10, Pohoomull Bros., having drafts to meet requested accused to make some payment in cash, and accused did then give a check on Thomas Cook & Sons for 15,000 rupees. On February 22, the Bank informed Pohoomull Bros. that the Curtice draft had not been paid. On February 23, Mr. Lokumull and Mr. Tejumull "went to the accused at his bungalow and we told him what our banker had written. Then the accused told us that he had wired his agents E. Curtice & Co. to sell some of his shares and that he had received a reply saying that the shares do not fetch the proper value and so it was advisable to get a loan. Accused also said that he had

wired to his agents to give the terms on which he could get a loan but that no reply had been received." (p. 23). He then gave a draft for £4,000 on William Collins & Sons Co., Ltd. Accused knew that the Curtice draft for £5,000 was not going to be paid on presentation and he knew that knowledge of that fact would come to Pohoomull Brothers before he got out of India, hence the payment of £1,000 on February 10th. With full knowledge thus brought home to him of the dishonor by E. Curtice & Co. of the £5,000 draft, accused did none the less on February 22nd, draw on the same firm for £2,000 in favor of Ganeshi Lall, and on February 23, draw on the same firm for £1,700 in favor of Ali Raza. On February 27, the Collins party sailed for Colombo, accused having with him many thousands of pounds worth of jewels, and leaving behind £9,700 of worthless paper.

That all of his representations as to his military position and his membership in the firm of William Collins Sons & Co., and his financial condition which induced the credit and the delivery of the jowelry were all false and untrue.

III.

The acts of the accused were criminal in India and if they had been committed in Louisiana, would have been criminal there.

INDIAN PENAL CODE.

Sec. 420—Whoever cheats and thereby dishonestly induces the person deceived to deliver any prop-

erty to any person or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec. 24—Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing dishonestly.

Sec. 813 of the Revised Statutes of Louisiana reads:

"Whoever, by any false pretense shall obtain, or aid and assist another in obtaining from any person, money, or any property, with intent to defraud him of the same, he shall on conviction, be punished by imprisonment at hard labor or otherwise not exceeding twelve months."

In British India extradition is governed by the Extradition Acts of Great Britain of 1870 (33 and 34 Vict c 60) and of 1873 (36 and 37 Vict c 60).

The Indian Extradition Act of Nov. 4, 1903, Act XV contained in Legislative Acts of 1903 (p. 163) provides for the administration in British India of the Extradition Acts of 1870 and 1873 and of the Fugitive Offenders Act of 1881 and for the extradition of criminals in cases to which the extradition acts of 1870 and 1873 do not apply

and in the schedule attached to the Act of extradition offenses on requisitions from Foreign States, "cheating" reference being made to Sec. 420 of the Indian Penal Code, is named.

That the offense of the accused is called "cheating" in India does not make it without the treaty. It is not necessary that the crime should have the same name in both countries.

As was said in *Greene v. U. S., 154 Fed. R., 406,* while the extradition and the indictment must be for the same criminal acts, it does not follow that the crime must have the same name in both countries. The same crime often has different names in different countries. If the act in question is criminal in both countries and within the terms of the treaty nothing more is required. * * * It is not a question of names.

In *Powell v. U. S. (C. C. A.), 206 Fed. Rep., 403,* it was said that if the complaint intelligibly describes the offense and if the offense so described is punishable by the laws of both countries and if by any name it is included in the extradition treaty that is enough.

In *Wright v. Henkel, 190 U. S., p. 58,* the Court says:

> "The general principle of International Law is that in all cases of extradition *the act done* on account of which extradition is demanded must be considered as a crime by both parties." (Italics ours).

Where the affidavit charges that accused did receive and retain stolen property, he is not entitled to be discharged on the ground that in the State where found receiving stolen property is a crime, but retaining it is not, the presumption being that the demanding country will not violate its treaties and will not try accused for an offense for which he was not extradicted.

Bingham v. Bradley, 241 U. S., 511.

In *Kelly v. Griffin, 241, U. S., 13, 14,* it is said:

> "It is objected that although perjury is mentioned as a ground for extradition in the treaty, the appellant should not be surrendered because the Canadian Criminal Code, Sec. 170, defines perjury as covering false evidence 'whether such evidence is material or not.' As to this it is enough to say that the assertions charged here were material in a high degree and that the treaty is not to be made a dead letter because some possible false statements might fall within the Canadian Law that perhaps would not be perjury by the law of Illinois. 'It is enough if the particular variety was criminal in both jurisdictions.' "

The United States on behalf of the State of Washington asked in England for the extradition of a fugitive upon evidence which made out a case of larceny and embezzlement within the definition of the Washington Statutes.

In England the same evidence showed neither larceny nor embezzlement, but it did show the crime of "fraud by

a banker" within Sec. 81 of the Larceny Act, which was an extraditable offense under the treaty of 1889 with the United States.

The prisoner sued out a writ of *habeas corpus* held that he must be remanded for extradition.

Rex v. Dix, 18 Times Law Reports, p. 231 (K. B.).

"In *Re Arton, No. 2, volume L. Q. B. D., 1886,* the prisoner had been committed under the treaty between great Britian and France for a number of offenses within the treaty and among them one offense described as *'faux en ecriture de commerce'* (falsification of accounts), and a contention was made upon the argument of a writ of *habeas corpus,* that under the law of England the accused was not guilty of forgery; that the falsification was not in the order of committal described as committed by Arton as a director, officer, or member of a public company, or as a clerk, officer, or servant, which would be necessary to constitute falsification a crime according to English law; and that even if the order of committal were amended in this respect he could not properly be committed for falsification on the ground that such falsification was not a forgery under the English law. The Court held that if the acts of the accused established a crime under the laws of both countries and within the treaty for extradition, it was not necessary that such crime should be called by the same name or under the same head. It was sufficient if it be a crime under the laws of both

countries and within the treaty; and that treaties ought to receive a liberal interpretation, which means no more than they should receive their true construction according to their language, object and intent.

"The same construction of the treaty between Great Britian and France, that a crime need not bear the same name to bring it within the treaty, if it was criminal by the laws of both countries, was also held in *Re Bellecontre, 17 Cox, C. C., 253*, and *Ex parte Piot, 15 Cox, C. C., 208.*"

Cheating is a generic term and applies to any fraudulent device by means of which one is induced to part with the ownership of his property, hence, it necessarily includes the obtaining by false pretenses. It has sometimes been said that the chief distinction between "cheating" and "obtaining by false pretenses" is, that cheating may be false representation as to the future, and that false pretenses may be predicated only on the past or present. But this is inexact: a mere broken promise would not justify an indictment for cheating any more than it would justify an indictment for obtaining by false pretenses.

An essential ingredient of each offense is the existence of the fraudulent intent at the time the goods are obtained and the promise or representation made; if such fraudulent intention does then exist the offense is cheating at Common Law, and obtaining by false pretenses under the law of Louisiana.

In *State v. Will, 49 La. An., 1337,* it was held that "cheating" and "obtaining by false pretenses" are synonymous. The language of the Court is:

> "If a person parts with the ownership and possession of his property as the result of fraud practiced upon him, it is not larceny, but a cheat at common law, or obtaining goods under false pretenses under our statute."

If a man buys goods under the representation that it is his intention to pay for the same, and he then and there has no such intention, it is cheating at common law and obtaining by false pretenses under the law of Louisiana. But if, at the time of buying the goods, it was his intention to pay for them, his failure to pay is neither cheating nor obtaining by false pretenses.

In *State v. Jordan, 34 La. An. 1219,* the indictment and conviction was sustained. The Court says:

> "The charge against the accused was obtaining goods by false pretenses. Amongst the false pretenses set out in the information is this: that the accused represented 'That he then and there wanted to buy goods on credit of the said firm of Flash, Preston & Co., in fair and unusual honest course of trade, with intent to pay honestly for them, etc.' And this is almost immediately followed by the statement that said Flash, Preston & Co. on the faith of said pretenses did deliver goods."

When Collins gave in payment for the jewelry which he obtained, drafts which he had no authority to draw, he obtained by false pretenses.

In *State v. Seipel, 104 La., 67*, it was held that an indictment for obtaining money under false pretenses which avers that accused did falsely pretend that he had certain moneys deposited to his credit in bank, against which he could draw a check, and upon which he did draw a check on which he obtained money, is sufficient averment.

When Collins falsely represented himself as a wealthy man and entitled to credit, and falsely represented himself as a partner of William Collins Sons & Co., and obtained the jewelry, he obtained by false pretenses.

In *State v. Tessier, 32 La. An., 1227*, where the indictment and conviction were sustained, defendant's false pretenses were that his name was Smith, and that he was a photographer and in business at Natchitoches, that he had at his house fifty dollars, out of which he promised to pay the prosecutor twenty dollars the next morning. In this case the Court also said,

> "It is not necessary that the false pretenses should be the sole inducement by which the property is parted with; if they have controlling influence, it is enough, though other minor considerations operate upon the mind of the party."

The learned and experienced Judge who heard the proceedings was familiar with the laws of Louisiana and held

that the evidence made out a clear case *prima facie* of obtaining goods by false pretenses (pp. 72-75).

IV.

Proceedings for extradition are not limited or confined to the rules applicable to preliminary examinations as to local crimes in the place where the person sought for on extradition, is found.

The provisions in the treaty that delivery up to justice "shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had been there committed" were not intended to cover or have any reference to local rules of practice, but simply that if the *evidence of criminality*, justified a commitment for trial, in the place where the accused was found commitment should follow.

In *Elias v. Ramierez, 215 U. S., 398, 409*, an extradition proceeding which was commenced in Arizona for the extradition of the accused to Mexico on the charge of forgery; the deposition and papers introduced in support of the charge contained statements of two persons unsworn to, the depositions had attached the certificates of the U. S. Ambassador in Mexico and the charge d'affaires that they were "properly and legally authenticated so as to entitle them to be

received for similar purposes" by the Act of Congress of August 3, 1882, and Mr. Justice McKenna says at p. 409:

> "It is further contended that the statements of Resas and Euriques were unsworn to and because unsworn to were not admissible in evidence; that "under the common law and the law of Arizona the unsworn statement of no witness is competent upon a hearing before a committing magistrate" and would not justify a commitment for trial in Arizona. It is hence contended that it was not sufficient to justify the extradition of the appellee. In re *Egita, 62 Fed. Rep., 972;* In re *McPhun, 30 Fed. Rep., 57; Benson v. McMahon, 127 U. S., 457,* are adduced to sustain the contention. The answer to the contention is that the statute providing for extradition makes the depositions receivable in evidence and provides that their sufficiency to establish the crime shall be such as to create a probability of the commission by the accused of the crime charged against him. This is the principle announced by the cases cited by the appellee."

To the same effect *Ex parte La Mantea, 206 Fed. Rep., 330.*

In *ex parte Glazer, 176 Fed. Rep., 702 (C. C. A.)* an extradition proceeding, the deposition of an accomplice, uncorroborated, was used in support of the extradition, and it was held that the provisions of the New York Code, that a conviction could not be had upon the uncorroborated evidence of an accomplice had no application.

In *Gluckman v. Henkel, 221 U. S., 512,* the complaint refererd to bills of exchange and the depositions showed them to be promissory notes. Mr. Justice Holmes says:

> "It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For while, of course, a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. *Grin v. Shine, 187 U. S., 181, 184;* see *Pierce v. Creecy, 210 U. S., 387, 405.* We are bound by the existence of an extradition treaty to assume that the trial will be fair. The evidence in this case seems to us sufficient to require us to affirm the judgment of the Circuit Court."

V.

In Extradition cases the inquiry is limited to ascertaining whether there is or is not a *prima facie* case of guilt. The question of actual guilt or innocence cannot be gone into.

In *Charlton v. Kelly, 229 U. S. 456,* it was held that matters of defense are for the trial Court and not for the committing Magistrate: that a proceeding in extradition is not a trial, and the issue is not the actual guilt, but whether there is a *prima facie* case sufficient to hold the accused

for trial. In the cited case insanity was offered as a defense.

It was held that the issue in an extradition proceeding is confined to the single question of whether the facts for the State make a *prima facie* case of guilt sufficient to make it proper to hold the party for trial; and an offer of testimony which is in the nature of a defense can be excluded: that a writ of *habeas corpus* could not be used as a writ of error and that mere errors in the rejection of evidence are not subject to review by a writ of *habeas corpus*.

The claim was strenuously asserted that under Sec. 3 of the Act of August 3, 1882, witnesses for the accused were required to be heard.

Mr. Justice Lurton, p. 641, says:

> "The phrase in §3 of the Act of August 3, 1882, 'that he' (the accused) 'cannot safely go to trial without them' (witnesses) 'cannot be construed as giving a right to a full trial in violation of treaty stipulations,' but it must be confined to such a preliminary hearing only as was already allowable under the existing practice; viz., such as is appropriate to a hearing having reference only to a commitment for future trial.
>
> "There is not and cannot well be any uniform rule determining how far an examining magistrate should hear the witnesses produced by an accused person. The proceeding is not a trial. The issue

is confined to the single question of whether the evidence for the State makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. Such committing trials, if they may be called trials in any legal sense, are usually regulated by local statutes. Neither can the Courts be expected to bring about uniformity of practice as to the right of such an accused person to have his witnesses examined, since if they are heard, that is the end of the matter, as the ruling cannot be reversed.

"In this case the magistrate refused to hear evidence of insanity. It is claimed that because he excluded such evidence, the judgment committing appellant for extradition is to be set aside as a nullity, and the accused set at liberty. At most the exclusion was error, not reviewable by *habeas corpus*. To have witnesses produced to contradict the testimony for the prosecution is obviously a very different thing from hearing witnesses for the purpose of explaining matters referred to by the witnesses for the Government. This distinction was taken by Mr. Justice Washington in the case of *United States v. White, 2 Washington, C. C.*, when he said:

"Generally speaking, the defendant's witnesses are not examined upon an application to bind him over to answer upon a criminal charge. The defendant's witnesses are never sent to the grand jury, except where the attorney for the prosecution consents thereto. But in this incipient stage of the prosecution, the judge may examine witnesses who were present at the time when the offense is said to have been committed, to explain what is said by the witnesses for the prosecution, and the cross-examina-

tion of the witnesses for the prosecution is certainly improper.

"We therefore conclude that the examining magistrate did not exceed his authority in excluding evidence of insanity. If the evidence was only for the purpose of showing present insanity by reason of which the accused was not capable of defending the charge of crime, it is an objection which should be taken before or at the time of his trial for the crime, and heard by the Court having jurisdiction of the crime. If it was offered to show insanity at the time of the commission of the crime, it was obviously a defense which should be heard at the time of his trial, or by a preliminary hearing in the jurisdiction of the crime, if so provided for by its laws. By the law of New Jersey, insanity as an excue for crime is a defense and the burden of making it out is upon the defendant. *Graves v. State, 45 N. J. L., 203; State vs. Maioni, 78 N. J. L., 339, 341; State v. Peacock, 50 N. J. L., 34, 36.* A defendant has no general right to have evidence exonerating him go before a grand jury, and unless the prosecution consents, such witnesses may be excluded. 1 Chitty Crim. Law, 318; *United States v. White, supra, Respublica v. Shaffer, 1 Dall., 236, 1 L. ed. 116; United States v. Palmer, 2 Cranch, C. C., 11, Fed. Cas. No. 15,989; United States v. Terry, 39 Fed., 355, 362.*"

VI.

The depositions from London and Glasgow on behalf of extradition, which the Judge excluded (p. 59) should have been received.

§5271, R. S. originaly provided that copies of depositions upon which an original warrant in any foreign country may have been granted attested and certified as required, could be received in evidence as to the criminalitly of the person apprehended.

This section was amended by the Act of June 9, 1876, C. 133, 19 Stat., 59, omitting the requirements of the attestation of the copies of the depositions by the oath of the party producing them and eliminating the provision that the depositions were limited to those upon which an original warrant of arrest was granted and allowed original depositions as well as copies to be received in evidence if authenticated and certified to by the principal diplomatic or consular officer of the United States.

The Act of June 19, 1876, was repealed by Section 6 of the Act of August 3, 1882, together with so much of Section 5271 which was inconsistent with the Act of 1882. Section 5 of the Act of August 3, 1882, 22 Stat. 216, is the present law as to the evidence on hearing any extradition case and reads

> "in all cases where any depositions, warrants or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under title sixty-six of the Revised Statutes of the United States, such depositoins, warrants and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if

> they shall be proper and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act."

It will be observed that there is no limitation as to the period in which the depositions should be taken and provides for any depositions, etc.; these depositions were certified to by a principal diplomatic officer of the United States, the Secretary of the Embassy (Rev. Stat., § 1674) at London, and his certificate recites that they are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of India as required by the Act of Congress of August 3, 1882. This certificate entitled them to be received and admitted as evidence. The suggestion may be made that no harm has been done in these particular proceedings by the rejection of these depositions, as the accused has been held for extradition, but these depositions contained very material evidence as to the falsity of the representations made by the accused as to his partnership in Collins Sons & Co., his financial condition and the lack of authority to draw upon the drawee named in the drafts, and removed the criticism on the letters and reports contained in the papers from India.

VII.

If there was sufficient ground for holding the accused by the Extradition Judge upon the evidence before him, he is not to be discharged for defects in the original arrest or commitment.

Yordi v. Nolte, 215 U. S. R., 227;
Nishimura Ekin v. U. S., 142 U. S., 651, 652.

VIII.

That the judgment appealed from should be affirmed is respectfully submitted.

ROBERT H. MARR,
Of Counsel for Appellee.

Supreme Court, U. S.
FILED
APR 10 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 672.

CHARLES GLENN COLLINS,
Appellant,

versus

VICTOR LOISEL, U. S. MARSHAL,
Appellee.

MOTION TO ADVANCE.

DONALDSON CHAFFERY,
Counsel for Appellee.

ROBERT H. MARR,
Of Counsel.

HAUSER PRINTING CO., "The Legal Printer," 720 Paydras St., N. O., La.

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Appellee.

MOTION TO ADVANCE.

Comes now Donaldson Caffery, of counsel for Victor Loisel, United States Marshal, and for the British Consul-General at New Orleans, and suggesting to the Court that Charles Glenn Collins, having been committed to custody to be held for extradition to British India for trial on charges pending against him in the Chief Residency Magistrate's Court at Bombay, India, applied for writs of habeas corpus, which said writs being refused, said Charles Glen Collins has prosecuted this appeal.

And, further suggesting to the Court that this is a

criminal case and one of international extradition; that the offenses for which the extradition of said Collins is sought are alleged to have been committed in British India in February, 1917; that the original affidavits herein were filed on November 5, 1917, ever since which said date this matter has been pending before the Courts in one form or another, notwithstanding the earnest efforts of the British Consul-General at New Orleans to bring about a speedy determination that this appeal, the second herein taken was filed in this Honorable Court, December 31, 1921; that the proper administration of criminal justice and the carrying out of the treaty obligations existing between the United States and Great Britain require as speedy a termination as practicable of the issues herein involved.

Moves the Court that this case be now advanced on the docket.

DONALDSON CAFFERY,
Counsel for Appellee.

ROBERT H. MARR,
Of Counsel.

Mr. J. Zach Spearing,

Attorney for Charles Glen Collins.

My Dear Sir:—You will hereby please take notice that on the tenth (10th) day of October, nineteen hundred and twenty-two (1922,) at the court room of the Supreme Court of the United States in the City of Washington, District of Columbia, and in accordance with Rule 6 of said Honorable

Court, Victor Loisel, United States Marshal for the Eastern District of Louisiana, and the British Consul-General at New Orleans, will submit for the consideration of the said Court the annexed and foregoing motion to advance said appeal.

Said motion will be submitted upon all of the grounds set forth herein; will be based upon the record, papers and files in said case.

Dated at New Orleans, Louisiana, this 30th day of March, 1922.

DONALDSON CAFFERY.

I hereby acknowledge service upon me of motion to advance, as well as copy of said motion.

J. ZACH SPEARING,
Attorney for Charles Gler. Collins.

March 30, 1922.

I hereby certify that copy of within motion and of notice were served personally upon J. Zach Spearing, Esq., counsel for appellant, March 30, 1922.

DONALDSON CAFFERY.

COLLINS *v.* LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 672. Argued April 28, 1922.—Decided May 29, 1922.

1. To warrant extradition (in this case to India under the treaties with Great Britain) it is not necessary that the name by which the crime is described in the two countries be the same, nor that the scope of the liability be coextensive, or, in other respects, the same in each; it is enough if the particular act charged is criminal in both jurisdictions. P. 311.
2. The Act of August 3, 1882, c. 378, § 5, 22 Stat. 216, repealing Rev. Stats. § 5271 so far as inconsistent, admits as evidence in extradition proceedings, warrants and other papers, and copies thereof, as well as depositions, authenticated so as to authorize their admission for similar purposes in courts of the foreign country, when such authentication is proven by the certificate of the principal diplomatic or consular officer of the United States resident in such country. P. 313.
3. In extradition for an offense committed at Bombay, India is the "foreign country", within the meaning of this statute, and the papers may be certified by the Consul General of the United States stationed at Calcutta, of whose identity and of whose status as our principal diplomatic or consular officer resident in that country the court takes judicial notice. P. 314.
4. Evidence that the accused obtained valuable personal property by knowingly false representations of his wealth and standing, of his authority to draw the draft given the vendor and of the identity and financial standing of the drawee, *held* sufficient to show an obtaining by false pretenses within the law of Louisiana as well as a cheat at common law. P. 314.

5. Under the Treaty of August 9, 1842, with Great Britain, providing that extradition shall only be had on such evidence of criminality as, according to the laws of the place where the person charged is found, would justify his arrest and commitment for trial if the offense had been committed there, and under the law of Louisiana, allowing accused persons to present evidence in their own behalf before the committing magistrate, a person arrested for extradition is entitled to introduce evidence rebutting probable cause, but not evidence in defense. P. 315.
6. The function of the committing magistrate is to determine whether there is competent evidence sufficient to hold the accused for trial and not whether it would suffice for a conviction. P. 315.
7. His conclusions as to relevancy of evidence are not reëxaminable in *habeas corpus* unless so clearly unjustified as to amount to denial of the hearing prescribed by law. P. 317.
8. The phrase "such evidence of criminality" in the Treaty of 1842, *supra*, refers to sufficiency of evidence in elements essential to a conviction, not to the character of specific instruments of evidence or to rules governing admissibility. P. 317.
9. The procedural law of the State cannot entitle the prisoner to introduce evidence made irrelevant by the treaty. P. 317.

Affirmed.

APPEAL from a judgment of the District Court in *habeas corpus*, remanding the appellant to the custody of the marshal under a commitment issued in an extradition proceeding.

Mr. Guion Miller and *Mr. Edgar Allen Poe*, with whom *Mr. J. Zach Spearing* and *Mr. J. Kemp Bartlett* were on the brief, for appellant.

Mr. Robert H. Marr for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This is the second appeal by Collins in this case. The first was dismissed in *Collins* v. *Miller*, 252 U. S. 364, for want of jurisdiction. There the earlier proceedings and the nature of the controversy are fully set forth. After our decision the case was again heard by the District Court,

on the same record and the same evidence; and on October 25, 1921, judgment was entered. By that judgment the writ of habeas corpus was granted, so far as the commitment was based on charges of obtaining property by false pretenses from Pohoomull Brothers and from Ganeshi Lall & Sons; and as to these commitments the court discharged Collins. But as to the commitment based on the charge of obtaining property by false pretenses from Mahomed Ali Zaimal Ali Raza, the court dismissed the application for habeas corpus and remanded Collins to the custody of Loisel, the marshal. The British Consul General acquiesced in this judgment. Collins appealed from so much thereof as recommitted him to the custody of the marshal. As the judgment below was final and disposed of the whole case, we now have jurisdiction. It is insisted, on several grounds, that the committing magistrate was without jurisdiction, and that consequently the appellant should have been discharged.

First. Collins contends that the affidavit of the British Consul General does not charge an extraditable offense. The argument is that the affidavit charges cheating merely; that cheating is not among the offenses enumerated in the extradition treaties; that cheating is a different offense from obtaining property under false pretenses which is expressly named in the Treaty of December 13, 1900, 32 Stat. 1864; that to convict of cheating it is sufficient to prove a promise of future performance which the promisor does not intend to perform, while to convict of obtaining property by false pretense it is essential that there be a false representation of a state of things past or present. See *State* v. *Colly*, 39 La. Ann. 841. It is true that an offense is extraditable only if the acts charged are criminal by the laws of both countries. It is also true that the charge made in the court of India rests upon § 420 of its Penal Code, which declares: " Whoever cheats and thereby dishonestly induces the person de-

ceived to deliver any property to any person . . . shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,"[1] whereas § 813 of the Revised Statutes of Louisiana declares: "Whoever, by any false pretence, shall obtain, or aid and assist another in obtaining, from any person, money or any property, with intent to defraud him of the same, shall, on conviction, be punished by imprisonment at hard labor or otherwise, not exceeding twelve months." But the affidavit of the British Consul General recites that Collins stands charged in the Chief Presidency Magistrate's Court with having feloniously obtained the pearl button by false pretenses; and the certificate of the Secretary to the Government of India, which accompanies the papers on which Collins' surrender is sought, describes the offense with which he is there charged as "the crime of obtaining valuable property by false pretenses." The law does not require that the name by which the crime is described in the two countries shall be the same; nor that the scope of the liability shall be coextensive, or, in other respects, the same in the two countries. It is enough if the particular act charged is criminal in both jurisdictions. This was held with reference to different crimes involving false statements in *Wright* v. *Henkel*, 190 U. S. 40, 58; *Kelly* v. *Griffin*, 241 U. S. 6, 14; *Benson* v. *McMahon*, 127 U. S. 457, 465; and *Greene* v. *United States*, 154 Fed. 401. Compare *Ex parte Piot*, 15 Cox C. C. 208. The offense charged was, therefore, clearly extraditable.

Second. Collins contends that the evidence introduced was wholly inadmissible. That particularly objected to

[1] Imprisonment under the Indian Penal Code is either "simple" or "rigorous"—the latter with hard labor. Indian Penal Code, § 53. "Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly.'" Indian Penal Code, § 24.

on this ground is the warrant of arrest and copies of *prima facie* proceedings in the Court of the Chief Presidency Magistrate, Bombay, which accompanied the affidavit of the British Consul General. The Consul General for the United States in Calcutta had certified that these papers proposed to be used upon an application for the extradition of Collins "charged with the crime of obtaining valuable property by false pretenses alleged to have been committed in Bombay" were "properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3, 1882." That act, c. 378, § 5, 22 Stat. 215, 216, declares that "depositions, warrants, and other papers, or the copies thereof" so authenticated, shall be received and admitted as evidence for all purposes on hearings of an extradition case if they bear "the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country." One argument of Collins is that the admissibility of evidence is determined, not by the above provision of the Act of 1882, but by § 5271 of the Revised Statutes, which provided only that copies of foreign depositions shall be admitted when "attested upon the oath of the party producing them to be true copies," and which did not provide for the admission of "warrants or other papers"; and that, on these grounds, copies both of the Indian documents and of certain London depositions should have been excluded; since neither the Consul General at Calcutta, the Secretary of the Embassy at London, nor the British Consul General at New Orleans, could attest that the papers were true copies. But § 6 of the Act of 1882 expressly provides for the repeal of so much of § 5271 as is inconsistent with earlier provisions of that act; and under § 5 thereof the admissibility of papers is not so restricted. Another argument of Collins is that the Indian documents were not

properly authenticated because they were certified to by the Consul General at Calcutta, and not by the Consul at Bombay, where the offense charged is alleged to have been committed. The "foreign country" here in question is India, not Bombay; and we may, in this connection, take judicial notice of the fact that the Consul General of the United States who is stationed at Calcutta is the principal diplomatic or consular officer resident in that country and who he is. Compare *New York & Maryland Line R. R. Co.* v. *Winans*, 17 How. 30, 41; *Keyser* v. *Hitz*, 133 U. S. 138, 146. The papers were, therefore, properly authenticated and were admissible. Compare *In re Behrendt*, 22 Fed. 699; *In re Charleston*, 34 Fed. 531; *In re Orpen*, 86 Fed. 760.

Third. Collins contends that the evidence introduced did not support the charge of obtaining property by false pretenses. The papers introduced tended to prove that Collins obtained the pearl button from the jewelers as a result of his representing that he was a wealthy man; that he was a partner in William Collins Sons & Company of Glasgow and London; that he was a colonel in the Howe Battalion of the Royal Naval Division and was then on six months' leave; that he had a right to draw on Messrs. E. Curtice & Company, 8 Clarges Street, London, the draft of £1700 which he gave the jewelers; and that this was a firm of bankers. The papers tended to prove also that all these representations were false to Collins' knowledge. It is clear that evidence to this effect, if competent and believed, would justify a conviction not only for cheating, but also of obtaining property under false pretenses. *State* v. *Tessier*, 32 La. Ann. 1227; *State* v. *Jordan*, 34 La. Ann. 1219; *State* v. *Will*, 49 La. Ann. 1337; *State* v. *Seipel*, 104 La. 67. The contention of Collins is that the evidence established only a broken promise or, at most, common-law cheating. It was not the function of the committing magistrate to determine whether Collins was guilty, but

merely whether there was competent legal evidence which, according to the law of Louisiana, would justify his apprehension and commitment for trial if the crime had been committed in that State. *Charlton* v. *Kelly*, 229 U. S. 447, 456. If there was such evidence this court has no power to review his finding. *Ornelas* v. *Ruiz*, 161 U. S. 502, 508; *Terlinden* v. *Ames*, 184 U. S. 270, 278; *McNamara* v. *Henkel*, 226 U. S. 520. The papers tended to establish more than a broken promise or common-law cheating; and according to the law of Louisiana they furnished "such reasonable ground to suppose him guilty as to make it proper that he should be tried." See *Glucksman* v. *Henkel*, 221 U. S. 508, 512.

Fourth. Finally Collins contends that the evidence of criminality was not such as under the law of Louisiana would have justified his apprehension and commitment for trial if the crime or offense had been committed there. The argument is that by the law of Louisiana a person charged with having committed an offense is entitled to make a voluntary declaration before the committing magistrate and also to present evidence in his own behalf (Revised Statutes 1870, § 1010; Laws of 1886, Act No. 45); that this right to introduce such evidence is, therefore, secured to a prisoner by the treaty; [1] and that this requirement as to evidence of criminality was not complied with, because Collins was not permitted to introduce evidence in his own behalf.

Collins was allowed to testify, and it was clearly the purpose of the committing magistrate to permit him to testify fully, to things which might have explained ambiguities or doubtful elements in the *prima facie* case

[1] "Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed." Treaty of August 9, 1842, Art. X, 8 Stat. 572, 576.

made against him. In other words, he was permitted to introduce evidence bearing upon the issue of probable cause. The evidence excluded related strictly to the defense. It is clear that the mere wrongful exclusion of specific pieces of evidence, however important, does not render the detention illegal. *Charlton* v. *Kelly*, 229 U. S. 447, 461. The function of the committing magistrate is to determine whether there is competent evidence to justify holding the accused to await trial, and not to determine whether the evidence is sufficient to justify a conviction. *Grin* v. *Shine*, 187 U. S. 181, 197; *Benson* v. *McMahon*, 127 U. S. 457, 461; *Ex parte Glaser*, 176 Fed. 702, 704. In *In re Wadge*, 15 Fed. 864, 866, cited with approval in *Charlton* v. *Kelly*, *supra*, 461, the right to introduce evidence in defense was claimed; but Judge Brown said: "If this were recognized as the legal right of the accused in extradition proceedings, it would give him the option of insisting upon a full hearing and trial of his case here; and that might compel the demanding government to produce all its evidence here, both direct and rebutting, in order to meet the defense thus gathered from every quarter. The result would be that the foreign government, though entitled by the terms of the treaty to the extradition of the accused for the purpose of a trial where the crime was committed, would be compelled to go into a full trial on the merits in a foreign country, under all the disadvantages of such a situation, and could not obtain extradition until after it had procured a conviction of the accused upon a full and substantial trial here. This would be in plain contravention of the intent and meaning of the extradition treaties." The distinction between evidence properly admitted in behalf of the defendant and that improperly admitted is drawn in *Charlton* v. *Kelly*, *supra*, between evidence rebutting probable cause and evidence in defense. The court there said, "To have witnesses produced to contradict the testimony for the prosecution is

obviously a very different thing from hearing witnesses for the purpose of explaining matters referred to by the witnesses for the Government." And in that case evidence of insanity was declared inadmissible as going to defense and not to probable cause. Whether evidence offered on an issue before the committing magistrate is relevant is a matter which the law leaves to his determination, unless his action is so clearly unjustified as to amount to a denial of the hearing prescribed by law.

The phrase "such evidence of criminality" as used in the treaty refers to the scope of the evidence or its sufficiency to block out those elements essential to a conviction. It does not refer to the character of specific instruments of evidence or to the rules governing admissibility. Thus, unsworn statements of absent witnesses may be acted upon by the committing magistrate, although they could not have been received by him under the law of the State on a preliminary examination. *Elias* v. *Ramirez*, 215 U. S. 398; *Rice* v. *Ames*, 180 U. S. 371. And whether there is a variance between the evidence and the complaint is to be decided by the general law and not by that of the State. *Glucksman* v. *Henkel*, 221 U. S. 508, 513. Here the evidence introduced was clearly sufficient to block out those elements essential to a conviction under the laws of Louisiana of the crime of obtaining property by false pretenses. The law of Louisiana could not, and does not attempt to, require more. It is true that the procedure to be followed in hearings on commitment is determined by the law of the State in which they are held. *In re Farez*, 7 Blatchf. 345, Fed. Cas. No. 4645; *In re Wadge, supra; In re Kelley*, 25 Fed. 268; *In re Ezeta*, 62 Fed. 972, 981. But no procedural rule of a State could give to the prisoner a right to introduce evidence made irrelevant by a treaty.

Affirmed.